

# Law and the Constitution

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THIS IS CONGRESS



# This Is CONGRESS

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By Roland Young

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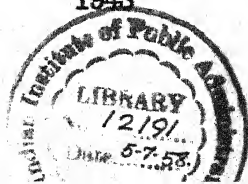
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TO  
IMOGENE STOKES  
AND  
ROBERT M. JACKSON

## PREFACE

*We talk much and think much of democracy, but most of our talking and our thinking concerns democracy in the abstract or the threats to democracy from other forms of government. We have not given very much attention to the institutions through which a democracy functions. In this book I propose to discuss Congress as a working democratic political institution, to point out how the machinery of Congress operates, and to suggest reforms which might better gear Congress to the demands of the big government under which we are living.*

*This book is an over-all examination of the place of Congress in our governmental system. It is written for the average layman interested in contemporary affairs, and it is not necessary that he have any technical knowledge of the operation of Congress. There are many facets of Congressional behavior which I have neglected, either purposely or inadvertently, and there are other facets which are discussed incompletely. This book is in no sense a work on the history of Congress or on the rules and procedures under which it operates.*

*One can get a factual account of Congressional*

*rules from the precedents and manuals of each House. One can get a simplified account from any first-rate text-book in American civics. And one can get an account of the manifold personalities which operate these rules from Pearson and Allen's Washington Merry-Go-Round or from the numerous biographical essays in the weekly magazines. Nor is this book a blueprint of the idealistic legislature in an advanced capitalistic society. On the negative side, I have tried to avoid any theoretical description of how Congress is supposed to operate — according to the rules — or how it ought to operate — according to the dreamers. On the positive side, I have tried to give a brief but realistic description of how Congress actually does operate and, given the present facts, how it might operate better.*

*Some parts of this book may sound technical; but much of the operation of Congress is also technical. We get mad and yell that the cotton farmers are making a grab-bag out of the treasury, or that the President is trying to pick the Members of Congress, or that Congress is trying to run the war. We hold indignation meetings, we write letters to the editor, and we wire our Congressman when something doesn't suit us. We are frequently a volatile people in our reaction to public affairs; but we are also an*

*apathetic people in analyzing the deeper reasons for our irritation and in doing anything about it. The deeper reasons are, in part, technical. And to explain Congress these reasons must be understood.*

*Congress is now in a transitional period. It will be changed, as other institutions will be changed, by the technological developments of our economy, by the impact of the war effort, and by the immense power which has been delegated to the bureaucracy. In this transitional period it is necessary for Congress to develop superior procedures for coping with the world of the present and the world that is to come.*

*We are accustomed to thinking of Congress as the body which makes the laws, but to an extent greater than most people realize, Congress is now a revisionary body which influences but which does not itself make public policy. In considering legislation, Congress has what amounts to an item veto over presidential and bureaucratic proposals, and in some instances this revisionary power is used very extensively. But ordinarily neither Congress nor any agent of Congress thinks up the policy which should be followed and the laws which should be enacted. The initiative in originating legislation has passed almost entirely to the President and to the bureauc-*

*racy which he directs. Congress is not organized as a thinking body. The power in Congress is stratified widely and deeply, and the key to Congressional action is maneuver and strategy.*

*In the consideration of legislation, as I have said, Congress has the equivalent of an item veto, and it can criticize or change or warp or improve or accept presidential proposals. Yet the formulation of public policy does not end when Congress passes a bill; policy must be continually determined in the execution of an act. This phase of policy is the core of government, but Congress has very little authority concerning it. Congress has no legal authority to select the President or the Cabinet or the government personnel, and it is not consulted on important public policy except by courtesy.*

*Congress is, in a measure, isolated from the main currents of governmental action. There is considerable Congressional hubbub when important bills are pending, but once a law is passed, Congress does not have much control over its operation nor is Congress much better informed on its operation than is the general public. Consider, for instance, the case of Secretary of the Navy Knox after he made his spectacular inspection trip to Hawaii following the Pearl Harbor affair. Secretary Knox reported his*

*findings to reporters at a crowded press conference, not to Congress, and Congressmen learned Knox's findings by reading the newspapers. There was nothing unusual about this procedure, and I am sure that the Secretary had no intention of slighting Congress. The instance does point up the fact, however, that once the laws are passed and the money appropriated, Congress does not have very effective methods of influencing or even of learning the end result of its legislation.*

*No matter how able a Member of Congress may be, he does not, as such, achieve a position where he has real political power. These powers belong to the administration. The day-to-day decisions which the government makes are made outside of and to a considerable extent independent of Congress. The exclusion of Congress from the positions of power makes Congress a frustrated and somewhat fretful body. It is not organized to consider major questions of policy which are being continually decided, and, not being so organized, it often turns its attentions toward local interests. It is no secret that localisms and parochialisms play a large part in Congressional behavior. Nor is it strange that this should be so, for Congress is not organized so that it is responsible for a national policy. The fear of the com-*



*ing election haunts every Member of Congress. To survive he must listen attentively to the local and particular interests in his region and to the pressure groups which he believes are strong enough to aid in re-electing him. He knows that his national party, in its mild way, will assist him in his campaign, no matter how he votes, and he is forced to court those pressure groups which will give him real support at elections. There is no institutional reason which compels a Congressman to have a national point of view.*

*Congress behaves very much like the business cycle. In times of crises it will pass much legislation and pass it quickly, as in the period following the outbreak of hostilities in December 1941. But at other times it is extremely averse in acting. If it follows the leadership of the President, it generally does so reluctantly, for Congress is envious and to some extent distrustful of the President (any president) and the bureaucracy. Congressional independence does not mean that Congress assumes the initiative in formulating policy, for, as I have pointed out, Congress is poorly organized to formulate policy and not at all organized to execute policy; Congressional independence means, for the most part, Congressional inaction.*

*Congress does much of its work through legislative committees, of which there are a total of almost a hundred in both Houses. The committees vary greatly in the extent of their power and importance, but the basic plan of organization is the same. Membership is distributed proportionately according to party strength, and a member advances from the bottom of a committee to the top by virtue of seniority. The jurisdiction of the committees does not ordinarily correspond to departmental structure, so that one committee may deal with legislation affecting several departments or one segment of a department, and several committees may deal with legislation affecting a single department. Committees are not organized to answer the need for specialization or the need for political power, although an attempt is made to answer both needs.*

*The effective power organization of Congress does not necessarily correspond to the political temperament of the country at large or to the political complexion of the administration in power. Power in Congress is dispersed primarily on the basis of seniority. There are, to be sure, geographical considerations which are always present, and there are deferences to personalities. But the keynote to power in Congress is seniority. So long as Congress*

*must decide political problems, the question of how power is allocated within the Congressional structure will be important.*

*There is now waste motion in much of what Congress does, for Congress does not always secure results commensurate with the energies expended. And Congress does work hard. It takes time to answer the requests of constituents and to keep in touch with home conditions; and it takes time to attend endless committee meetings. The political questions which Congress considers need not be as numerous as they are now, for much of what Congress does could be done better by the departments; but they should be more important than they are now. With the increasing specialization in administration, with the government extending the scope of its power, it is imperative that some institution correlate and control the myriad governmental activities. This Congress could do, and I believe that the future of Congress lies in organizing itself toward that end.*

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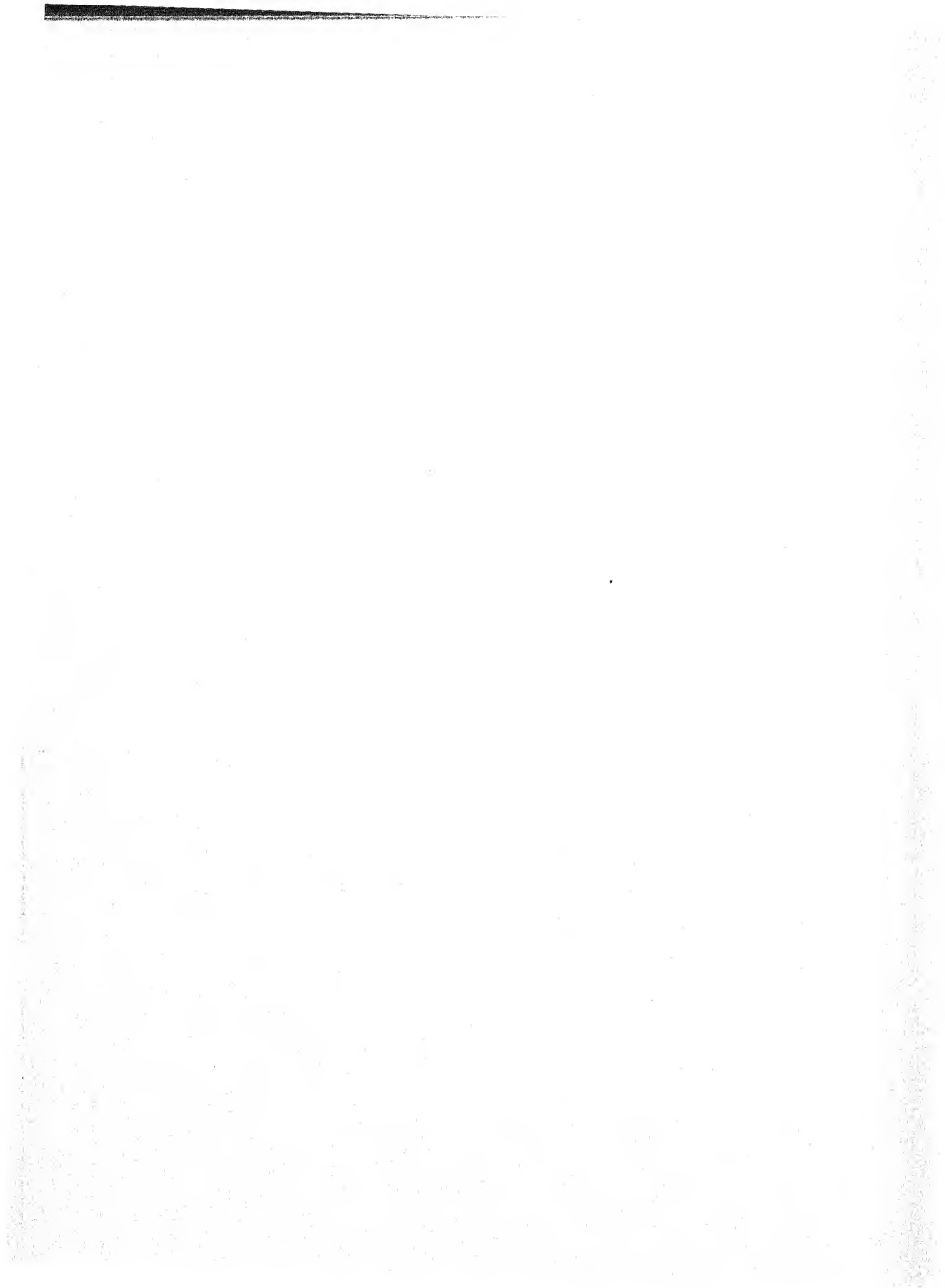
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THIS IS CONGRESS





## CHAPTER I

### WHAT IS CONGRESS SUPPOSED TO DO?

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- 1. Congress Can't Do Everything. 2. Congress Formulates Policy. 3. Congress Watches the Bureaucracy. 4. Congress is Frustrated*
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#### § 1. *Congress Can't Do Everything*

OUR old way of life is dead, and we are beset with doubts about the future. Regardless of the fortunes of the war, the meaning of many of our political ideas and the structure of our political institutions will be changed. The adult generation was taught that the budget should be balanced, that private business should operate the economy, and that Congress should make the laws without presidential interference. It was possible after the last war to hold the illusion that a return to the old economic and political conditions was possible. After several years of depression, of New Deal reforms, of the obsolescence of the balanced budget, of an approximation of full employment by governmental spend-

ing, and of the dislocations caused by the war effort, the old economic pattern cannot be re-created by removing what Woodrow Wilson once called the palsied hand of bureaucracy. Suddenly to free the economy after an extensive period of regulation would be to make the economy chaotic and directionless.

Our problem is to accommodate our political institutions to rapidly changing world events. Congress must adapt its practices and its ideas to the big government we now have and to the bigger government we may have in the future. We now know that legislatures are not necessarily a vital part of the governing process, that when legislative practices do not conform to the demands placed upon them, they may be by-passed. We in America, however, believe that a national legislature is an essential part of the democratic process. But belief is not enough. Like other institutions in the modern world, Congress must by its deeds show that it deserves to live. On the credit side, Congress is a going concern, and it is identified with a cause in which many men passionately believe; on the debit side, legislatures in other countries have been completely quashed, and in this country, for a variety of reasons, Congress is frequently attacked.

Legislative bodies have had a long and noble history, and they are one of man's greatest institutional achievements. Legislatures have demonstrated great tenacity under diverse conditions over a broad ex-

panse of time. By the eighteenth century they came into their own and in England they were able to define the prerogatives of the king; in France they were able to scuttle the monarchy; in America they were able to write the laws which the voters wanted. The idea of the legislature as a method of governing was so triumphant that in the last century Lord Tennyson could dream of a Parliament of Man where the conflicts of the world would be settled in the town hall.

Talk was the thing, Tennyson and those of his time believed. Man was rational, and if a proposition was clearly explained to him he would respond rationally. If everyone was given a chance to tell others what he thought, truth would prevail when the vote was taken. The legislature was the means to world understanding and world peace. We no longer possess Tennyson's naïve faith in the legislative process. Even if we hold fast to his premises, the facts are pretty much against us. All over the world the power of legislatures has been either usurped by dictators or dwarfed in importance by Chief Executives and their bureaucracies. In this era we are not so steadfast in our faith in legislatures as were our forefathers. We are not quite so sure that a composite of individuals chosen by the electoral process represents the best thinking which a democracy provides, that it is able to formulate the wisest policy, or that it is able to keep in check the bureaucracy which it has created. We fear, for instance,

that the delegation of power to the bureaucracy might eventually whittle away the powers of Congress; yet we know that Congress does not have the specialized knowledge which our complicated government requires to hold the economy together. We fear that the President might become too powerful and the stakes in a presidential election too great for a democracy; yet we know that Congress is not organized so that it alone can govern the country.

On the one hand we wish to have faith in Congress; we call on it spasmodically to save the Union, and when desperate and insecure, we cling to it for salvation like a sailor to a raft in a turbulent sea. On the other hand, we know the limitations of Congress, and we frequently become rather irritated with its action or its inaction; when we are frustrated in our political desires, we all too frequently pour out our hostility on Congress because it is the most convenient and most conspicuous object for our scorn. And it is easy to do because Congress has no corps of publicity agents to protect its integrity, as does every department, and we have every Member of Congress under our thumb because he will come up for re-election some day. In short, we are extremely confused in our opinion of Congress, for we do not now have a clear picture of what we expect Congress to do, of where the power of Congress ends and the power of the President begins; and, more specifically, we do not yet know how

great an impact a technical and highly organized economy such as ours will have on Congress, and we do not yet know how to fit the two together.

Some of the political ideas under which Congress operates come from another age and do not quite jibe with the times in which we live. Our culture is still shot through with the belief that big governments are inefficient, corrupting, and immoral, and that political independence is a virtue. Concentrated power is bad. We believe in the separation of powers and in an independent Congress; we dislike the rubber stamp; we disapprove of outside influence in elections; we like representatives who are above the control of parties; we approve unlimited debate; we expect Congressmen to do their own thinking and to vote their own conscience regardless of the factors which may influence the thinking of their conscience. We believe, at least, that Congress should act upon such premises, yet when Congress does act upon them, we frequently object to the results. If Congress acts boldly on a program, and on a program which has the approval of the President, it is often rather odiously described as a rubber stamp; and at other times if it does not act, it is a stumbling-block, a nuisance, and the reason why France fell.

The feeling that Congress is not all that it should be, that it needlessly delays some legislation, that it passes other legislation too hurriedly, that it is not always the master of the bureaucracy which it has

created, is shared by those both within and without Congress. The vilification of Congress is an old story, and some of the criticism should not be taken too seriously. Congress operates in a goldfish bowl, and all of the weaknesses inherent in public deliberation are exposed and publicized. Much of the vilification of Congress is due, I believe, to a cause more fundamental than that of open deliberation. The cycle of Congressional popularity fluctuates widely, not only because laws are popular or unpopular, but because of the uncertainty of what is expected of Congress. Congress has been attacked for its unrepresentative character, for being the tool of special interests, for corrupt acts like the salary grab, for being composed of venal politicians; on other occasions, and especially when it attacks the President, it is highly praised. Congress itself is not clear concerning the boundaries of its own power.

Neither are the constituents always clear on what they expect Congress to do. If a constituent is dissatisfied with the operation of the bureaucracy, he frequently blames Congress and expects Congress to step right in and straighten out the affair. The following excerpt from a letter of a constituent shows that some think of Congress as a super Pooh-Bah which can do everything. "We elected you members of Congress to make our laws and help run affairs," this constituent wrote in irritation. "We did not elect these bureaus, committees, boards, etc., etc. There is a dozen or more parties that pop up on

every board, committee, or bureau. Isn't this the work it was intended Congress should do?"<sup>1</sup>

There are not many people who willfully advocate that Congress be abolished, but one must admit that at times the criticism of Congress is pretty severe. Only recently a national political commentator called Congressmen "a miserable, fumbling, timid aggregation of political trimmers and panhandlers." He called Congress "a sorry counterfeit of a legislative body."<sup>2</sup> Another writer said that "conscienceless politicians" were exploiting the people of the United States.<sup>3</sup> There is at times great dissatisfaction with the method in which Congress operates.

When Congress failed to enact a positive legislative program during the great depression, the president of Columbia University, nettled by the lack of leadership in Congress, said that if the people were given a chance "to follow a real leader of large intellectual courage, they would rise and sweep the whole discredited fabric of our present-day national political machinery into the dust bin."<sup>4</sup> He wanted action. When the Senate passed the Government Reorganization Bill in 1938 — legislation which was

<sup>1</sup> From a letter of a constituent.

<sup>2</sup> Westbrook Pegler, 1942, *Release of Women United, Inc.*, 54 West Forty-sixth Street, New York City. The same theme runs through many of Pegler's columns.

<sup>3</sup> *Washington Times Herald*, February 17, 1942.

<sup>4</sup> Nicholas Murray Butler, before the National Industrial Conference Board, May 19, 1932, *Congressional Record*, June 8, 1932, p. 12278.



as greatly needed then as now — the *Boston Evening Transcript* remarked editorially that the Senate “has let the people down, broken their hopes that the American form of democratic government can be kept intact and opened the door to the kind of dictatorship which is plaguing the countries of Europe and which stands today as a menace to the peace of the world.”<sup>5</sup>

These illustrations demonstrate the confusion in popular thinking over the manner in which Congress should function. Over a broad period of time some important reforms have been adopted toward making Congress a more representative body, and other changes are being made in the internal structure of Congress. We have greatly broadened the suffrage, including giving the vote to women, and we elect Senators and the President directly rather than by the filtering process established by the Constitution. We have fairly well satisfied one of the requirements of democracy — we have an electorate which is large and fairly literate and representatives who are honest.

These reforms, however, do not solve the more nettling problems of what Congress is supposed to do and how it should do it; of the best organization of power within Congress; and of the relation between Congress, the President, the bureaucracy, the political parties, and the citizen. On these subjects there is no general agreement, and to the sphere of

<sup>5</sup> *Boston Evening Transcript*, March 29, 1938.

ordinary political controversy has been added the discussion of the proper sphere of Congressional action. This uncertainty is to be expected, for Congress was created in another age and under conditions different from those existing now. Underlying the uncertainty of the function of Congress is the uncertainty manifest in the political and economic fabric of the country.

## *§ 2. Congress Formulates Policy*

Congress is not organized in any very rational manner. It is not set up so that it can formulate policy itself, so that it can adequately review the legislation suggested by the President, or so that it can control the operation of the bureaucracy. Almost all legislation has to have the approval of committees, but the hundred regular and special committees are not organized on any plan corresponding to the organization of the departments, and the chairmen of the committees are selected by seniority of service on the committee. The political leaders do not have a great amount of control over the activities of the committees, and while they can and do advise the President from time to time, there is no compelling reason why their advice should be taken and no assurance that their advice would necessarily reflect the attitude of Congress.

The formulation of broad public policy cannot easily be squeezed into the pigeon-holes of almost

a hundred Congressional committees without becoming somewhat distorted. The political and economic questions we now face and will face in the future are related; because they are part of a seamless web they cannot readily be resolved by scores of committees, each working independently on a fragment of the main question, who have no opportunity to co-ordinate their knowledge or to pool their skills. The manner in which Congress formulates policy is very similar to the behavior of a leaky hose where the water squirts out in many directions rather than coming out of the nozzle in a well-directed stream.

The Finance Committee of the Senate is a good example of the confusion which exists in Congressional consideration of legislation. During the past few years the Finance Committee has considered such diverse and unrelated subjects as sugar legislation, the National Recovery Act, the Social Security Act, the Federal Alcohol Control Act, the Trade Agreements Act, veterans' legislation, and, of course, revenue bills. Sugar legislation is essentially an agricultural problem, while the NRA, trade agreements, and alcohol regulation are industrial problems. To cite an example of legislative diffusion, bonus legislation in the House is considered by the Ways and Means Committee, general war veterans' legislation by the World War Veterans Committee, and other veterans' legislation by the Committee on Invalid Pensions.

In order to emphasize the complexity of the political problems with which Congress must grapple, I wish to sketch broadly the present scope of governmental activities. The government attempts in peace times to control price levels through various devices; it attempts to control total capital investment and to underwrite certain types of investment; it regulates some businesses and it owns in part or outright other businesses; it establishes certain minimum standards of employment; it is the mediator in many employment-management disputes. In these latter days it is conducting a war and determining the production policy of the country, with all that implies; and it attempts to tie in our economy with the prevailing economies in other segments of the world and specifically in the Western Hemisphere. Our government is complicated beyond belief, and the task of operating the various units and of harmonizing them into a workable pattern demands great administrative skill.

A peace-time full-employment policy involves wage rates, total capital investment, government subsidies, monopolistic business practices, and many other related questions, but legislation affecting these subjects is referred to a large number of committees which have no agreement on the precise goal they are shooting for.

A war-time policy requires a high degree of policy co-ordination, but the Congressional method of formulating policy bit by bit, by semi-autonomous

committees, has not been changed. The Secretary of the Treasury can plead for economies in expenditures when presenting proposals for tax legislation, but the revenue-raising committees have no jurisdiction over spending. In the spring of 1942 there was considerable public discussion on the length of the working-day, on overtime pay, and on profits in defense industries. An over-all policy was needed which would satisfy both capital and labor that the other was not using the emergency as a lever to improve its position and which would satisfy the public that capital-labor troubles were not hampering production. There was a tussle in Congress between various committees for jurisdiction over various aspects of the problem, but there was no method for considering these questions as part of a whole problem. The committees on labor wanted jurisdiction over labor problems, and so did the committees on military affairs and on naval affairs, for defense contracts were involved, and so did the committees on the judiciary, for criminal penalties were attached. The revenue-raising committees wanted jurisdiction over the profits question, and so did the special committees in each House which were investigating the defense effort.

Senator Pepper suggested that the legislative program could only be lifted from the mire in which it was bogged by the creation of a special over-all committee which would consider legislation affecting the various phases of the war program. "The

various parts of the war-production problem are so interrelated that it is not fair either to the problem or to the country to take up one segment of it without consideration of the others," he said. "Speaking for myself, I am willing to vote for any measures affecting labor which I think are fair. . . . At the same time, I do not want to vote for that kind of legislation and completely ignore the question of excess bonuses and excess profits without requiring equality of service from every segment of our economy and from all people. I venture to suggest to the Democratic and Republican leaders that the Vice President or the two leaders might appoint a committee, consisting of perhaps 10 Members on one side and 5 on the other, distributed over the membership of the Senate, and let the committee make a study of such problems as are pertinent to this whole question."<sup>6</sup> The Senate did not adopt Senator Pepper's proposal, however, and it was not until the President sent his seven-point anti-inflation program to Congress later that month that the legislative activities of Congress were given definite direction.

A post-war policy will in some respects be even more complicated than a war economy, for political and economic co-operation with our neighbors must supplant our present military co-operation; we shall inherit all of the old unsolved problems of our in-

<sup>6</sup> *Congressional Record* (temporary edition), April 1, 1942, pp. 3371-2.

ternal economy, and, in addition, the solidifying impact of the war effort will have evaporated.

How well equipped is Congress, whose members are ordinarily not experts and who have all too little time for affairs of State, to legislate and to control this immense government and to plan for the future? It can be said briefly that Congress is not organized to think nationally, that the members do not always feel that it is their responsibility to support a national program, and that Congress is still too bogged down with petty details to get a clear grasp of the total picture. It is pretty well isolated from participating in important decisions on policy. It does not always have the opportunity to decide the important issues. It allocates political power for reasons which have little to do with the merits of the men holding that power. It is not able to formulate a complete fiscal policy, nor does it control expertly the expenditure of funds. Its supervision over the bureaucracy is often tenuous and spotty. It has not developed very efficient methods for controlling delegated power.

The thinking of Congressmen is frequently geared to the prejudice of the regions from which the Congressmen come. There are really very few Congressmen who identify themselves with the administration in power, who feel that the cause of the one is the cause of the other, and who feel they should support a truly national policy even at the risk of

their own skin. There are not many Congressmen like the one from New York City who, in the autumn of 1941, followed the leadership of his party in amending a vital part of the so-called Neutrality Act even though he believed that vote would cost him his seat in the House.

If you ask any Congressman how he has stood on public questions he will say something like this: "I voted for Bill A and at one time I introduced a bill similar in all essential respects to the one finally passed; I voted against Bill B, but I voted for certain amendments which, if accepted, would have been of great benefit to the people of my district; I voted against Bill C, which seems to me to have certain unconstitutional features and which contains several unlawful delegations of authority." If this Congressman is a member of the party in power, he will also say: "I voted for the President when I thought he was right and I voted against him when I thought he was wrong. I am in general agreement with his program, but I am no yes-man, and I reserve the right of independent criticism." If this Congressman is of the opposite party, he will say: "I voted for some legislation which I long have sponsored and which has finally been adopted by the opposing party. I feel that it is absolutely necessary for the people of my district to have a man in office who is not afraid to say what he thinks, who is able to offer an independent program of action, and who



will prevent those in power from transforming our democracy into a tyrannical dictatorship — a procedure which is far toward completion.”

No man nor group of men is now responsible for what Congress does. The actual power structure of Congress is so well concealed that when public policy is criticized an innocent bystander is generally hit. If the President is attacked, he can say that his influence over Congress is somewhat limited; if the political leaders are blamed, they can say that they have few sanctions over the votes of the party members; if the committee chairmen are blamed, they can say that they were voted down in the committee; if the steering committee in the House is blamed, it can say that it could not get a rule for the consideration of the bill; if a Senator is blamed, he can say that Senator Z would have filibustered; if a Representative is blamed, he can say that he was not the committee which considered the legislation in question; if Congress itself is attacked, the members will scurry to secure popular favor by passing an act, say, to repeal pensions for Congressmen.

The procedures of Congress and the thought-habits of the people accentuate the importance of the individual attitude or the individual achievement at the expense of the group attitude or the group achievement. The accent in Congress is on individual rather than on group responsibility, but neither the individual nor the group is given the

necessary tools. I am not here berating individual thought or individual criticism nor am I suggesting that the program sponsored by the President is necessarily right and should be followed. I am suggesting, however, that Congress find methods for establishing a positive program for which it will be responsible so that the emphasis of those in power will be on "We did this," or "We propose that," rather than, as at present, on "I voted for this," or "I proposed a bill for that."

It is not too difficult to remain aloof, to dissociate oneself from the responsibility for forming policy; any newspaper editor performs this function. But to too great an extent the Congressmen do this also; they wish to be free to advocate their own pet cause or to save their own neck if the party to which they belong seems to be stranded on the rocks. National policy has to be formed by some group, and when Congress absolves itself of that responsibility some other group will form it.

The extent to which Congress is enamored of details is well illustrated by Congressional consideration of appropriation bills. The United States has not now nor ever has had what can truly be called a budget. Congress never decides directly whether it wishes to spend seven or seventeen or seventy billion dollars and whether it wishes to raise the necessary revenue by borrowing or by taxing. Instead of considering the President's budget estimates as a whole, Congress considers separately a number of

highly itemized appropriation bills, the total outlay never being known until deficiency bills are passed the following year. Congress does not legislate directly on a budget bill, nor is there any correlation between the amount spent and the amount raised by taxation, inasmuch as the budget is not presented so that Congress can consider total amounts of spending or taxing. Instead of passing an annual budget, Congress passes eleven regular appropriation bills for the following fiscal year and several deficiency and defense bills for the current fiscal year. Each regular appropriation bill contains approximately ten thousand words and includes hundreds of appropriation items and a myriad of limitations on the manner in which money may be spent.

The real faults of Congressional procedure are not only the appropriations for post offices, rivers and harbors, and the like—the so-called pork-barrel appropriations—but limitations on spending which hamper administration and which favor particular Congressional districts. To cite an illustration of the detail of appropriation bills, the Military Appropriations Act contains the proviso that: "No part of the appropriation made in this act shall be available for the salary or pay of any officer, manager, superintendent, foreman, or other person having charge of the work of any employee of the United States Government while making or causing to be made with a stop watch, or other time-measuring device, a time study of any job of any such em-

ployee between the starting and completion thereof, or of the movements of any such employee while engaged upon such work." This is typical of the thousands of limitations which clutter up appropriation bills and which divert the attention of Congress from deciding broad fiscal policy. Whether such limitations are wise does not concern me here; what is important is that they deflect Congressional attention from forming broad fiscal policy and direct it toward parochial interests.

In undertaking to say precisely how funds are to be spent, Congress undertakes a task for which it is not too well prepared. Congress shoulders the burdens of planning work and of allocating funds, thus depriving administrators of initiative in doing the best job possible with the money appropriated. Congress occasionally appropriates lump sums and asks that the administrators submit reports showing the objects for which money was spent, but this practice is not general, and on the whole the administrators have little incentive to spend money as wisely as possible, with the results checked by an adequate post-audit.

The focus is on the small amounts — on the details of spending. This procedure has several drawbacks: in the first place, Congress does not have enough information to appropriate wisely for such items as janitor service in the Governor's mansion in Alaska; in the second place, emphasis on details of spending prevents Congress from establishing a

definite fiscal policy; and in the third place, by divorcing spending from taxing, Congress fails to realize that voting supply carries with it a concomitant responsibility to say how that supply shall be raised.

### § 3. *Congress Watches the Bureaucracy*

Congress is not organized so that it has very much influence over a law once it is passed. Few procedures have been evolved so that Congress can further consider policy formulated by the administration, and, in addition, the anarchistic organization of committees makes it rather difficult for Congress to investigate and to co-ordinate the activities of the departments. The core of government is the day-by-day execution of the laws. Policy is continually being formulated by administrators, and very frequently the laws themselves are not a very informative guide to action. The dogma of the separation of powers attempts to draw a sharp line between making laws and executing them, and legalists have made the line sharper than it need be. The idea that once Congress has spoken in the form of legislation, the administrators have no alternatives in executing the law and that the administrators themselves do not make law is, of course, erroneous. Once a law is passed, Congress is still interested in how it is being executed, and it attempts in various ways to have a share in determining future policy

based on that law. Now that the government has been given great grants of power, what is Congress to do? Is it to sit back and relax, once the laws are passed; is it to meddle and fret and hamper administration by gratuitous suggestions; or is it to be given a greater share in and responsibility for the execution of policy?

The transfer of fifty destroyers to Great Britain in 1940 is a case in point. There were many who agreed with the results of this action but who criticized its method of execution, for the President did not get the consent of Congress before he acted. Under the theory of the separation of powers, Congressional interest in executing the law by which the destroyers were transferred should have ended at the point of passage in Congress. Obviously, however, Congress was vitally interested in the destroyer deal and wanted to have its say, yet there was no established procedure by which Congress or its accredited leaders could have given formal consent to the transaction. A law or a resolution could have been passed, to be sure, but there was already a law on the statute books which, the President believed, gave him full authority to make the transfer. There was no method by which the President could ask for further Congressional consent and expect to get an answer within a definite time. The President did get the unofficial consent of political leaders of both parties, but he did not, and could not readily, get it from Congress.

Instances continually recur where the position of the President would be bolstered by securing the consent of the Congress to a proposal. This procedure would give Congress a real opportunity to deliberate on and to decide many crucial political problems. And being a political body, Congress should decide these problems. In making decisions, however, the element of time is important, and Congress is not now organized so that it can be relied on to give a quick answer to a problem. Congress does act quickly at times, but, because there is now no time limit on Senate debate, it does not always do so. If Congress wishes to participate further in deciding political questions, it will have to pay the price of limiting Senatorial debate.

In this era of big government, control and co-ordination are increasingly important because of the great power which the government has over our individual destinies and the destinies of the world. Under the present structure of power, however, Congress is handicapped in acting either as an independent critic or as a co-ordinator of policy, for the committees of Congress are ordinarily not so organized that they can appraise the work of the departments. There are some exceptions: the investigations of the Truman Committee in the Senate and the Tolan Committee in the House, for instance, demonstrate what serious Congressional committees can do in exposing laxness of administration. But even in the field of investigation there

is overlapping of jurisdiction and repetition of the same testimony before various committees. The heads of quiet, conservative, mousy agencies are rarely called before Congressional committees, but the heads of agencies in the public spotlights are often called to testify so frequently that they must neglect their main function of administration. In April 1942 Chairman Donald M. Nelson of the War Productions Board wrote House Democratic Leader John W. McCormack: "Between January, 1941, and the end of March, 1942, our figures indicate the officials of the Office of Production Management and the War Production Board appeared before congressional committees on 191 occasions."<sup>7</sup> Another example of the duplication of testimony is the hearings held by the Senate Patent Committee in the spring of 1942 which covered much of the same ground that the Temporary National Economic Committee had covered a few years earlier.

Congress can perform an important function in co-ordinating administrative activities, but underlying this co-ordination there must be a measure of co-operation and understanding. The problem of co-ordination is complicated because of the technical aspect of many governmental operations. No Congressmen are technicians in all fields. Technology has created problems which cannot be solved

<sup>7</sup> *Congressional Record* (temporary edition), April 16, 1942, p. A1546.



by political standards alone, by the balancing of the interests of various groups and arriving at some sort of synthesis. The social consequences of technology demand the use of experts, both as administrators and as over-all co-ordinators. Policy cannot be resolved entirely by sweet reason, by a deliberation of the pros and cons and an arrival at a decision, for technology has so splintered old modes of behavior that reason alone is no longer a unifying force. Does this mean that the technician will usurp the function of the politician, that the economic demands for a policy co-ordinated by experts will relegate the politician to a minor role? Does it mean that the technicians, the modern Guardians of the People, will spin plans for the government, remaining impervious to political responsibility by hiding behind the stone walls of the Civil Service? Does it mean that planning and integration must be made by the technician rather than by the politician, or perhaps by a new species now being bred in certain New Deal agencies which combine technical skill with political astuteness? Does it mean that to be effective the technician must be isolated from the blunderings of political interference?

The British have a phrase: "Keep the expert on tap but not on top." There is nothing against keeping the expert on top, of course, if he is aware of the consequences of what he is doing and is also able to co-ordinate his function with the total picture. We are part of the Anglo-Saxon tradition

which believes in making the technical experts, and above all the leaders of the armed forces, responsible to civil authority. We feel that the political expert has a broader grasp of the whole picture and that he is more alert to the necessary political adjustments which must be made. This means, in effect, that Congress should concentrate its attention on the broad political questions, that it should study them and meditate on them and, so far as possible, turn over the duties which are not so time-consuming to the bureaucracy and to its own staff.

Our government is not the single, integrated unit which many people imagine it to be when they speak of "the government"; it is, rather, an aggregate of power groups, each of which has an area of action which is not well defined, which is anxious to increase its own power and to absorb the power exercised by rival agencies. The agencies of the government operate very much like primitive amoebæ: they have an innate tendency to grow and to multiply and to develop. It is essential that some political institution settle the quarrels and define the limits of departmental action. The administrative branch has developed certain techniques for co-ordinating and delimiting activities, but some of the questions raised are essentially political and should be decided by Congress. Theoretically the Cabinet is the co-ordinating unit, but its work has been supplemented by permanent staff agencies such as the

Bureau of the Budget, the National Resources Board, the Presidential Secretariat, and other units in the Executive Office of the President. In the early days of the New Deal, President Roosevelt created a short-lived super-cabinet known as the National Emergency Council, membership of which included many experts and administrators of cabinet rank, but this organization was too large and too poorly staffed to work effectively.

There are many problems which demand a more definitive answer than can be given by the administrative branch, and it is up to Congress to give these answers. This means that Congress must consider the bureaucracy something like a ward which must be guided sympathetically and sometimes even sternly. The attitude of Congress should not be that of a vaunted independence which carps but does not criticize, which obstructs but does not create, and which prevents others from governing but does not enable itself to govern. The notion that Congress is not functioning properly unless it is bucking the President dies a slow death.

#### § 4. *Congress is Frustrated*

Most Congressmen are frustrated, and I mean this in the political sense only. They are frustrated because, to paraphrase Browning, their reach for power exceeds their grasp, for the great positions of power are held by the President and the heads of the de-

partments and agencies; they are frustrated because the courts can override their authority; they are frustrated because constituents and pressure groups can make such great demands on their time and can limit their scope of action.

There is a gap between what Congress actually does and what it wishes it could do. The important everyday policy of the government is decided by those at the top of the administrative hierarchy, and these positions are not filled by Congressmen. Rather, the administration of policy is performed by men whom Congress can neither hire nor fire. Any ambitious Member of Congress is consequently thwarted, because however wise or politically strong he may be, he cannot as a Congressman become the authoritative, responsible spokesman for any governmental policy. The chairmen of the committees on banking and currency, for instance, can only influence the fiscal policy of the government by indirection; they cannot themselves participate in its determination.

The frustration which Congress feels in being isolated from the main stream of governmental activity often results in attempted encroachments on the prerogatives of the President. If successful, these encroachments would necessitate a complete reorganization of Congress so that it could properly execute the functions of the President. Proposals have been made to place the Bureau of the Budget under the direction of Congress, to give Congress-

sional officers the appointing power in specified cases, to repeal laws by Congressional resolutions not requiring the consent of the President, to make certain members of Congress the effective administrative heads, and other such plans. A conspicuous example of the desire of Congress to have the power to repeal laws on its own volition is the provision allowing it to terminate the Lease-Lend Act by the passage of a Concurrent Resolution. This type of resolution does not require the consent of the President—only a majority of both Houses. In other words, Congress has claimed the power (the constitutionality of which has not yet been tested) to repeal acts on its own authority without further consent of the President. This is one of the most conspicuous instances of Congressional interference with the President's long-established prerogatives.

I have heard one responsible Member of Congress advocate transferring the powers of the President to the leaders of Congress—a change so great that, in the words of this Congressman, the office of President could be adequately filled by an idiot. To this Congressman there was a perpetual contest between the President and Congress which would end with the supremacy of one or the other, and, being from Congress, he wished to be identified with the victor. It is necessary to add that the implications of a parliamentary system had not been fully developed by my Congressman friend; he did not see that under this plan the powers of government would be

centralized in an executive committee of Congress; that a strong party organization would be developed which could command votes within Congress and determine candidates in the Congressional districts; and that the committee system of government would end. My friend's contribution to reorganizing the government was more enlightening for the attitude shown toward the presidency than for a sound program for the future of Congress. This attitude shows, however, the depths to which distaste of the President can permeate the Congressional mind, how frustrated the Congressman feels when his efforts are pitted against the embedded powers of the President and the bureaucracy. When compared to the power of these institutions, he thinks that his share in the process of governing is small.

Control over administration is also exercised by the federal courts, and in many respects the courts, like the President, are one of the rivals of Congress for power. Although the courts have negated many important Congressional acts, Congress seems never to have harbored against them the resentment that it often harbors against the President and the administrative agencies. Recent Supreme Court decisions have been more tolerant of Congressional interpretations of the Constitution, but in the period from the Dred Scott decision to the Supreme Court Reorganization Bill the judiciary split fine hairs over the limits of Congressional and administrative power. In these decisions Congress as a whole ac-

quiesced, partly because Congressional lawyers were sympathetic with the broadening of judicial jurisdiction, partly because many in Congress felt that the courts supplied a form of responsibility otherwise lacking in our government. Many Congressmen have realized the limitations of responsible control of the administration by Congress and, given their judicial propensities, have been willing to turn over the job of control to the courts.

The courts are also rivals of Congress in competing for the services of some of the most able Members of Congress. Most Congressmen, I believe, prefer the security of a federal bench to the insecurity of a Congressional career, and there is hardly one who would not prefer an appointment to the Supreme Court. The offer of a district court judgeship enticed Senator Schwollenbach from the Senate in 1940 although the Senator was in no apparent danger of being retired to private life by the Washington electorate. In 1933, Senator Bratton accepted an appointment to the circuit court even though the Senate at that time was entering an exciting phase of its career, and a phase, moreover, in which Senator Bratton would have played an important part. Because the courts are able to offer prestige, a higher real income, and greater security, they are real competitors of Congress for the services of the most able legislators.

Constituents and the pressure groups are another frustrating problem. Congressmen are never lone-

some and are rarely idle, for during every waking hour the voters make persistent and incessant demands on their time. Few Congressmen feel so secure in their jobs that they can be selective in what they wish to do; and because they depend on the voter to keep them in office, they are not in a position to become hard-boiled and make their time their own. Demands for a Congressman's attention press in from all sides: from the constituents who want jobs or interviews or who need assistance in their relations with the government; from such requests as for public speaking, which must be complied with by any conscientious legislator who wants to be re-elected; from the regular duties associated with service in Congress; and from social and other extra-curricular activities. The times call for men of broad vision, but the enormous demands on a Congressman's time impede any who wish to be national legislators.

The constituent must be courted to be re-elected, but the more time a Congressman spends with constituents the less he has to think and plan and work for the national interest. There is none who questions the right of petition, but no district and no state should expect their Congressmen to be chore boys for their numerous requests and to be national legislators at the same time. With the increasing amount of money being invested by the government, the Congressman becomes a promoter who attempts to convince department officials of the



merits of proposed projects in his state or district. Congressional offices are a combination Travelers Aid Bureau, employment agency, lobby at large, and Chamber of Commerce promotion bureau. These offices perform many services for the people. Regardless of his voting record, a Congressman is often able to ingratiate himself with his constituency because of the services he can perform for them. If a Member of Congress knows his way around Washington, if he knows who in the departments can get things done, if he knows how to advise his constituents regarding dealings they may have with departments, he may be able to stay in power regardless of his voting record.

Constituents protest when their economic condition is being worsened, when they wish it improved, or when they are merely trying to protect what they have. They beg or threaten or cajole when they want a job, a defense plant, priorities, appropriations to alleviate the chigger-bug menace, or when they wish to persuade a Congressman how to vote. No matter how hard the Congressman tries, his efforts are partially self-defeating, for success in one endeavor will spawn a dozen similar demands. If Plattesville gets a bomber base, shouldn't Niwot get a magnesium plant? If Henry X is given a job as an attorney, shouldn't George Y be made district manager? The stream of constituents who flow daily into Congressional offices never ends and will probably never end until the Republic reaches that Beu-

lah Land where all are satisfied, economically, physically, and emotionally.

The demands on Congress are often self-centered and egocentric and inimical to the public welfare. Constituents often expect Congressmen to drop everything and listen to their wants, and they expect their Congressmen to persuade top administrators, or the President, to drop everything for an interview with them. I know of a request recently made by men otherwise moral and public-spirited and loyal to the Republic for a Congressman to arrange a joint interview with Donald Nelson, the chairman of the War Production Board, Jesse Jones, the chairman of the Reconstruction Finance Corporation, and Robert P. Patterson, the Under Secretary of War, for the purpose of financing a proposed defense product of which the proponents had very little technical knowledge, for which there was a dubious need, and for which the proponents had limited capital.

Pressure groups are especially short-sighted when they evaluate a Congressman's worth by his stand on a particular issue in which they are interested. They demand to know the Congressman's attitude on this or that and threaten to defeat him if he doesn't give the correct answer. The constituents or the pressure groups who evaluate a Congressman's career by a single issue are great deterrents to the formulation of a comprehensive national policy, for they say, in effect: "If you support what I want,

anything else goes. My own interest in national policy is confined to your vote on the project in which I am especially interested." In the past the proponents of the bonus had this attitude; the proponents of the high tariff had it; the proponents of prohibition had it. More recently this attitude has been supported by those who pledged to defeat Congressmen who did not vote correctly on labor legislation. This pledge read:

I solemnly pledge that I will refuse to vote for the reelection of any United States Senator or any United States Congressman who does not consistently vote for a law outlawing all strikes in every industry connected with defense and who does not vote to abolish the limitation of 40 hours a week labor in defense industries for the remainder of the war.

I object to a pledge of this kind on two counts. My first objection is the misleading content of the pledge. The implications are that strikes in defense plants were extensive and were greatly hampering the defense effort, and that the work-week was limited by law to forty hours. At the time these pledges were being circulated, the extent of strikes was very negligible; and there was no law on the statutes limiting the work-week to forty hours — the law referred to related to overtime pay. People were exhorted to sign these pledges by newspapers, by full-page advertisements (paid for by whom?), and by speakers at mammoth protest rallies. It does the cause of democracy no good for pressure groups to

undermine man's confidence in man by persuading people to believe incorrect or misleading statements. Integrity is still a fine word.

My second objection is the narrow political outlook implicit in a pledge of this type. The signer of such a pledge says that no matter how far-sighted a Congressman may be, no matter how he voted on other and more important issues, he should be defeated if he doesn't vote correctly on abolishing strikes and the forty-hour week. The signer also implies that he will vote for anyone who opposes this Congressman, whether the candidate be a defeatist, a saboteur, or Schicklgruber himself. If you make a Congressman jump through the hoop on one or two issues and if you do not care how he votes on all other problems, you won't develop a legislature that is really national.

## CHAPTER II

### WHO THINKS UP THE LAWS:

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1. *The President.* 2. *The Bureaucracy.* 3. *The Political Parties.* 4. *The Public*
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#### § 1. *The President*

ONE cannot discuss Congress without paying a good deal of attention to those outside influences which sway Congressional action. Those influences are the President, the bureaucracy, the political parties, the pressure groups, and public opinion. These units are important because Congress largely depends on one or more of them to think up and to sponsor the laws which it should enact. The President is the most important of these units because of the peculiar position which he has in our political organization. He sits at the apex of both the administrative and the political structure; he has the final word in all official proposals for legislation; and he has great powers which enable him to persuade Congress to enact these official proposals. No matter who thinks up the laws which Congress passes, the prerequisite for their enactment is usu-

ally sponsorship by and approval of the President.

The effective leadership of Congress rests with the President. This phenomenon must be explained in reverse order. He is not the chosen leader of Congress and therefore is entitled to certain powers. Rather, he has been given certain powers by the Constitution; he has received more from our political institutions: the combined influence of time and of strong men has made the President the effective head of both the executive and the legislative branches of the government. The initiative for the most important legislation comes from the President, for the President alone has the power and the information necessary for formulating and co-ordinating a national policy. The significant position of the President in formulating policy has been well stated by Mr. D. W. Brogan: "If his own weakness, or the jealousy of Congress, prevents a President from doing a job," he says, "there is no one else to do it and it is to the White House that the people look for aid, not only when the President is a great personality or popular leader, but when he is a nullity, for in that office, if anywhere, is represented the national life of the American system."<sup>1</sup>

That the President is the leader of Congress is not often openly admitted on the floor of Congress, or even by the President, although the actuality of presidential leadership is implicit in practically every-

<sup>1</sup> D. W. Brogan: *Government of the People* (New York: Harper & Brothers; 1933), p. 135.

thing the President or Congress does, and it is difficult to imagine how futile and ineffective a body Congress would be without presidential leadership. The President, to be sure, does not act like a leader in the usual sense, for he appears but rarely in the Capitol building and takes no active part in the legislative process, such as engaging in debate or listening to testimony before a committee. He never, for instance, asks to have his remarks extended in the *Congressional Record*, introduces a pension bill, or performs any of the myriad duties which become our legislators.

The theory of the proper function of the President has changed considerably since the early days of the Republic. President John Adams, for instance, thought of the President as a balance wheel who would remain above partisan strife and would preserve order among groups competing for power by siding with the weaker of the parties. The President, he said, should act as "the balance between the two assemblies, with function as mediator, arbitrator, arbiter, umpire, to mediate, intervene, interpose, and decide between the aristocracy and the democracy, between the rich and the poor, between the few and the many, in the two chambers, and between two parties." It would be to the President's interest "to side with the weaker of the other two, whichever it may be at the time being."<sup>2</sup> At times

<sup>2</sup> Correa Moylan Walsh: *The Political Science of John Adams* (New York: G. P. Putnam's Sons; 1915), pp. 78-9.

the President is, as John Adams suggested, the balance wheel—the mediator between power groups—but he is also the political leader of the government in power.

The position of the President as the leader of the modern legislature has been forcefully and eloquently stated by Woodrow Wilson. The President, Wilson said, “is the political leader of the nation, or has it in his choice to be. The nation as a whole has chosen him, and is conscious that it has no other political spokesman. Let him once win the admiration and confidence of the country, and no other single force can withstand him, no combination of forces will easily overpower him. His position takes the imagination of the country. When he speaks in his true character, he speaks for no special interest. If he rightly interprets the national thought and boldly insists upon it, he is irresistible; and the country never feels the zest of action so much as when its President is of such insight and calibre. . . . It is for this reason that it will often prefer to choose a man rather than a party. A President whom it trusts cannot only lead it but form it to his own views.”<sup>3</sup>

Unlike Wilson, President Taft thought the division of power between the President and Congress had its compensating factors and in his later years gave his blessings to that arrangement. “Our Presi-

<sup>3</sup> Woodrow Wilson: *Constitutional Government* (New York: Columbia University Press; 1908), p. 68.



dent," Taft said, "has no initiative in respect to legislation given him by law except that of mere recommendation, and no legal or formal method of entering into the argument and discussion of the proposed legislation while pending in Congress. To one charged with the responsibilities of the President, especially where he has party pledges to perform, this seems a defect. But whatever I thought while in office, I am inclined now to think that the defect is more theoretical than actual. . . . The President . . . naturally chafes under an inability to put through important bills which he deems of the highest value. On the whole, however, I do not think the country suffers. Certainly not in this age and generation, when the bane of political methods, when the danger to the best interests of the country, is in the overwhelming mass of ill-digested legislation." <sup>4</sup> Taft failed to realize that the "overwhelming mass of ill-digested legislation" might be due in part to the sporadic nature of the relationship between Congress and the President.

The Taft attitude represents pretty well the attitude of Presidents who have been disinclined to take an active part in leading their party. This attitude was shared by President Calvin Coolidge, who in no real sense was the leader of the legislature. One commentator states that "in the most critical stage of the struggle for ratification of the protocol of the

<sup>4</sup> William Howard Taft: *The Presidency* (New York: Charles Scribner's Sons; 1916), pp. 7-9.

World Court, which had been recommended by the President and made an administration measure if Coolidge ever had one, they [the Senate leaders] received no word from the White House. When they went there to consult with him they were given no word of encouragement.”<sup>5</sup>

The legal power of the President as leader of Congress stems from the President's power to veto bills, to send messages to Congress, and to control the bureaucracy. His political power stems from his position as head of the party; he can consult with the leaders, address the public, and distribute patronage.

The President's power to veto bills is one of the most effective methods for establishing his leadership over Congress. Through the use, or the threatened use, of the veto the President can pretty well prevent legislation which he does not want from being enacted. Because he cannot vote items in legislation, however, he is often forced to accept compromises in legislation which he does not desire. President Wilson was exceptionally skillful in using the veto power to implement his leadership; the suggestions to Congress concerning legislation which he wanted “were unusually specific and were generally accompanied by a notice that the President would accept no bill which did not contain the essential principles outlined in the suggestions.”<sup>6</sup> Lit-

<sup>5</sup> W. E. Binkley: *The Powers of the President* (Garden City, N. Y.: Doubleday, Doran & Company; 1937), pp. 245-6.

<sup>6</sup> Norman J. Small: *Some Presidential Interpretations of the Presidency* (Baltimore: The Johns Hopkins Press; 1932), p. 179.

the discretion was left to Congress. All in all, Wilson was a successful leader of Congress, even though he was not supported by the chairmen of several important legislative committees. Lindsay Rogers cites the passage of the Selective Draft Act as "perhaps the greatest triumph that any American President has ever won in his relations with Congress." When war was declared, says Mr. Rogers, "there was a clear majority in each House in favor of adhering to the voluntary principle." <sup>7</sup> Through clever use of a bi-partisan majority, however, President Wilson was able to secure passage of the law.

Since the beginning of the Republic, Presidents have sent messages to Congress requesting the enactment of specific legislation; this has been especially true in the annual messages of the Presidents to Congress. In recent years this custom has been supplemented by the President's sending messages to Congress on specific legislative proposals and sometimes accompanying these messages with suggested drafts of legislation. These messages underscore the President's legislative program, and they indicate very specifically the legislation which the President wishes. It is sound legislative policy for the President to express his views before Congress formally enacts legislation, in order that Congress may not go through the waste motion of passing legislation which is later vetoed.

<sup>7</sup> Lindsay Rogers in *Quarterly Review*, Vol. CCXXXI (January 1919), pp. 131-2.

Under the present system of allocating power in Congress, one of the most effective means for the President to make his leadership effective is to enlist the support of influential and powerful legislative strategists; these are the men who can get things done. The process of getting legislation enacted is largely a matter of strategy, and it behooves any President who cherishes a successful career to cultivate the loyalty of the political leaders in Congress. The President must not only consult with his leaders, which he now does regularly, but he must also consult with the heads of the various committees concerning legislation under their jurisdiction. The actual participants in presidential conferences vary from bill to bill, for no man or group of men controls the legislative program. The President and his advisers must be sagacious enough to know at any one time the men with whom and the terms on which they must deal. The party spokesmen in both Houses make this job easier, but they do not eliminate the problem. Moreover, Presidents are often ignorant of Congressional folkways and waste valuable prestige by needlessly flouting Congress. It takes time and patience to establish effective relations with Congress, and even Congressional Presidents, such as Garfield and Harding, have not been notably successful.

The use of patronage is an old and established device for gaining Congressional support. President Lincoln, for instance, was extremely clever in allo-

cating patronage to bolster his own position, to entrench the rule of the struggling Republican Party, and to secure the passage of certain legislation. In the spring of 1864 Lincoln decided that there should be a constitutional amendment abolishing slavery. In order that it might be approved by three fourths of the states, Lincoln found it necessary to bring Nevada into the Union. Opposition to this movement developed in the House, and Lincoln found that the necessary votes were not assured. The President authorized Assistant Secretary of War Dana to secure the votes of three members who were reported as doubtful.

"What do they want?" asked Dana.

"I don't know. It makes no difference," replied Lincoln. "We must carry this vote or be compelled to raise another million of men and fight, no one knows how long. It is a question of three votes or new armies."

"What shall I say to these gentlemen?" continued the Assistant Secretary.

"I don't know," said the President; "but whatever promises you make I will perform."<sup>8</sup>

Two of the members wanted internal-revenue appointments and the third a position in the New York custom house. The jobs were promised "on the authority of the President." The following Oc-

<sup>8</sup> De Alva Stanwood Alexander: *History and Procedure of the House of Representatives* (Boston: Houghton, Mifflin Company; 1916), p. 379.

tober Nevada came into the Union and shortly ratified the Thirteenth Amendment. By the skillful use — or promise — of federal jobs Lincoln was able to secure a constitutional amendment and to bring another state into the Union. Not all the appointments of Lincoln or of other Presidents have been so fruitful. Ironically, the promised jobs were not all given, for President Lincoln was assassinated before arrangements were completed. After Lincoln's death President Andrew Johnson refused to make the third appointment. "I have observed in the course of my experience," he said, "that such bargains tend to immorality."<sup>9</sup>

There is no true love between the President and Congress, for this marriage of convenience was arranged by others without the advice or consent of either of the parties most directly concerned. Congress does not select the President nor the President Congress, but the two must get along together somehow and must behave in public with as much decorum as the circumstances permit. Some Presidents have accepted their relationship with Congress very much like a skittish husband who is always a little uncertain of how his temperamental wife will react to his advances. These Presidents say publicly that Congress is the real boss, but they coquettishly and covertly attempt to make Congress pay more attention to what they want. Other Presidents are more

<sup>9</sup> *Ibid.*

positive and domineering and have little hesitancy in frankly suggesting to Congress what should be done.

Lindsay Rogers has emphasized the never-ending struggle for power between various power groups within the government. "The organs of a government always compete for power and authority," he says. "Executive and legislative, upper chamber and lower chamber, electorate and representatives, permanent officials and political heads — the struggle never comes to an end."<sup>10</sup> The critical situation at the time and the nature of the personalities involved have much to do with the nature of this competition. Sometimes co-operation with the President is the keynote to power, as in 1934 when many Congressmen won election to office on the platform of "holding up the President's hands." In 1938 the keynote was independent criticism of the President. The temper of Congress, like the temper of the people, is mercurial. Consider, for instance, the frantic appeal for presidential leadership made by House Minority Leader Snell in 1933 in support of the Emergency Banking Act. "The house is burning down," he said, "and the President of the United States says this is the way to put out the fire. (Applause.) And to me at this time there is only one answer to this question, and that is to give the Presi-

<sup>10</sup> Lindsay Rogers: *The American Senate* (New York: Alfred A. Knopf; 1926), p. 2.

dent what he demands and says is necessary to meet the situation.”<sup>11</sup>

At the other extreme, it is sometimes necessary to create a myth of Congressional independence in initiating legislation. When the second Reorganization Bill was introduced in 1939, Representative Cochran declared that “Up to the hour that the bill was introduced no official nor employee of the executive branch of the Government had ever been consulted nor will you find in the bill one paragraph that was submitted or suggested by an official or employee of the executive branch of the Government.”<sup>12</sup> This statement, while undoubtedly true, ignored the fact that a similar but more far-reaching reorganization bill had been defeated in the House the prior year, and that the reorganization movement was started by the President and by his Committee on Administrative Management, which he had appointed three years earlier.

The reaction of Congress to presidential leadership is not always that of co-operation. As Harold Laski has said, “The more Congress is able to defeat the President, the bigger it appears in the life of the nation. It is thus given a vested interest in his defeat.”<sup>13</sup> Congress is ordinarily rewarded for its

<sup>11</sup> Representative Bertrand H. Snell, *Congressional Record*, March 9, 1933, p. 76.

<sup>12</sup> Representative John J. Cochran, *ibid.*, March 6, 1939, p. 2305.

<sup>13</sup> Harold J. Laski: *The American Presidency; An Interpretation* (New York: Harper & Brothers, 1940), p. 245.



independence and not for its co-operative attitude. Congressmen wish power. They get some satisfaction from rebuking the President, but this is a hostile act which compensates for their deeper frustration in not being able to exercise complete power themselves. The greatest amount of political power rests in the presidency; this is the apex of American political power, the goal of all who are politically ambitious, but the road to the presidency does not regularly run through Congress. Since the Civil War, Garfield alone has gone directly to the White House from the House of Representatives, and Harding alone from the Senate. Garfield's and Harding's presidential tenures — respectively 6½ months and 29 months, a total of less than three years — is an unimposing record. Better to come to the White House from a governor's mansion, as did Franklin Roosevelt, Wilson, McKinley, and Cleveland, and as did Theodore Roosevelt and Coolidge with stop-overs as Vice President. The number of Congressmen selected for Cabinet positions is more imposing, although the Hayes cabinet is the only one since the Civil War in which a majority of the posts were held by former Members of Congress.

An occasional show of independence is one of the ways of maintaining political power, but although the country may listen to a Congressman who flaunts his independence, it would be difficult for the country to follow his lead, even if it wished to, for the Congressman who sings solo leads no party

and neither has nor assumes much responsibility. His admonitions are, at best, suggestions for the powers-that-be to follow; they are rarely independent bids for power. Henry Clay and his Whig followers would be pleased if they knew how deeply the Whiggish doctrine of Congressional supremacy (read non-co-operation) had penetrated the American mind. It was the Whigs who invented the doctrine that Congress should exert its opinion entirely independent of the Chief Executive, and I suspect that Henry Clay clung so stubbornly to the doctrine because he was thwarted in his desire to become President. The idea has been further nourished by other strong-willed Members of Congress who did not reach the pinnacle of political power — men like Blaine, Aldrich, Lodge, and Borah. The disappointment of outstanding statesmen at not becoming Chief Executive has been institutionalized into a permanent Congressional-presidential feud.

Every President wants to get along with Congress, but he cannot always find arrangements which are satisfactory, for the technique of statesmanship is not easily mastered. The problem of how to deal with Congress is one which every President inherits, and any successful President must develop methods for securing the maximum co-operation of Members of Congress. Each improvises a method which he hopes will suffice in the political milieu of the times, but occasionally the legislative relationships become very corroded, as they were in 1895

when President Cleveland remarked that there was "not a man in the Senate with whom I can be on terms of absolute confidence."<sup>14</sup>

Because the relationship is so personal and so ephemeral, many have advocated a more institutionalized arrangement between Congress and the President. One of the most long-lived proposals is that Cabinet members should have seats in Congress. Both the Senate and the House have toyed with the idea, and in 1881 a select committee submitted an elaborate report advocating this unique plan. Even President Taft, normally cautious in political innovations, embraced the idea. He argued that the Cabinet would be able personally to introduce legislation, advocate its passage, answer questions, and enter into debate. Some of the Taft proposals would be improvements over the present procedure, but the most original features of the plan go but a little way, and the other proposals could be taken care of without making Cabinet officers Members of Congress. Effective Congressional leadership involves the determination of the legislative program, the time to be spent on individual bills, the order of the consideration of the legislation, and the naming of the committees to consider the bills. I doubt if Congress would be willing to give this power to the President's cabinet. The mechanism of introducing a bill is a minor chore, and almost any Congressman

<sup>14</sup> Allan Nevins: *Grover Cleveland; A Study in Courage* (New York: Dodd, Mead & Company; 1934), p. 650.

who supported the administration would be willing to introduce a presidential bill. I do not believe there are many incidents where a presidential proposal was not passed simply because no one would introduce a bill. It is not essential that Cabinet members be allowed to vote or introduce legislation or control time or do the numerous other things that Congressional leaders already do. I believe, however, that there would be real value in having the Cabinet members and other important administrative officers appear personally before Congress from time to time. This the President now does, and Cabinet members do, of course, appear at Congressional hearings, but this does not completely fill the gap between the executive and the legislative branches.

A further suggestion for augmenting the leadership of the President is that the President be given power to dissolve Congress once during every four-year term of office. The theory of this plan is that the fear of an election on a specific issue chosen by the President would make Congress hesitate before bucking the administration's program. In addition, it would allow the administration to formulate a more balanced policy, free from many embarrassing compromises which are now necessary. The plan would work well enough when the President merely threatened to dissolve Congress or, after a dissolution, received the support of a newly elected Congress. The power of dissolution would, I believe, make the President's leadership more effective,

but the questions raised in the event the country backed Congress rather than the President seem to me relatively unsolvable. If the President were defeated, he would have to resign and a new set of leaders be provided. Yet, as we have seen, Congress does not supply presidential leadership, nor would a further appeal to the people necessarily produce a President and Congress in harmony.

Congress has been traditionally jealous of the bureaucracy, and it has expressed this pique in parliamentary bombast, in limitations on bureaucratic discretion, and in sitdown strikes against presidential leadership. The exigencies of public policy cannot afford a Congress which is too temperamental, which in a crisis cannot be trusted to act. There needs be a more stable, a more institutionalized, and a less personal relationship between the President, the administration, and Congress. Great and historic contests between the President and Congress provide momentary dramatic satisfaction, but the resultant bad blood and bad government are often too high a price to pay for the entertainment. I am not sure that in these times the American government could stand a period barren of legislative accomplishment comparable to the second Cleveland administration or the last two years of the Taft, Wilson, or Hoover administrations.

The President, the bureaucracy, and Congress have similar and overlapping interests. This confusion of power is a singular feature of the American

system. In order that the government may operate effectively, it is necessary that each of these power groups be considerate of the position of and the prerogatives of the other groups. The example of the Johnson administration, when both the President and Congress were tactless in testing the boundaries of their powers, is a warning of the perils in failing to co-operate. With toleration, confidence, and co-operation our government can be strong and effective without being autocratic. Congress can co-operate with the President and the bureaucracy in framing policy, without at the same time losing its effectiveness as a critic of governmental operation.

### § 2. *The Bureaucracy*

Almost all important legislative policy is sponsored by the President. The President places the influence of his office behind certain legislation and, if the legislation is sufficiently important, he may even address Congress personally on the subject. But even the President does not pull a law out of the air; he does not call for a stenographer and start dictating. His chief advisers are the departments and agencies of the government most interested in the legislation, and it is they who originate most of the laws passed annually by Congress. On legislative matters the function of the President is that of personally sponsoring the more important legislative proposals. The function of Congress is that of re-

view and criticism; it is not primarily that of originating the policy itself, although it can, of course, defeat or amend the President's proposals. If a member of Congress is the real originator of some piece of legislation, it is generally necessary to secure the sponsorship of the President before it can be passed. In addition to the policy formulated by the President and the departments, policy is also formulated by political parties and by certain types of pressure groups and organized public opinion.

The preparation of legislation to be considered by Congress is primarily the responsibility of specialists. The departments themselves draft much of the legislation and, on important measures, many of the reports made by Congressional committees. Even when the responsibility for writing a specific law is delegated to the drafting services of the House or the Senate, the attachés frequently consult with the departments regarding the proposed legislation. Congressional reliance upon departmental aid is nothing new, for the authors of the Constitution anticipated and provided for this reliance. For many years the departments have written and sponsored legislation which they desired.

The New Deal has been criticized for submitting pre-drafted legislation to Congress and asking for Congressional consent to this legislation. I do not think this criticism is well taken, for even if Congress itself originated the legislation, the actual work would be done by the legislative drafting counsel of

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either the House or the Senate and they would ask advice from the departments. The important thing is not that Congress be given a chance to draft legislation, but that it be given an opportunity to vote on the issues which the legislation presents. Congress does not have the time nor is it well able to determine details. It does have the ability and it should be given the opportunity to vote on major public policy. Whether these questions are technically phrased by an expert from the administration or by an expert hired by Congress itself is beside the point.

In later years much legislation has been prepared by administrative departments after special studies have been made concerning its desirability. I believe that it is a wise policy for the administration to do as much spade work as possible before requesting Congress to pass specific legislation. The administrative departments are especially well equipped to do research, and they are also well equipped to draw on the knowledge and experience of experts outside the governmental service.

The Social Security Act is a good example of careful administrative preparation followed by minute Congressional scrutiny. In 1934 President Roosevelt appointed a Committee on Economic Security, consisting of the Secretary of Labor as chairman, the Secretary of the Treasury, the Attorney General, the Secretary of Agriculture, and the Federal Relief Administrator. After making a careful study of the causes of social insecurity, the com-



mittee recommended a specific program. Legislation containing these recommendations was referred to the Committee on Ways and Means; hearings were held for three weeks on this specific plan, following which there was further discussion in executive session. Representative Doughton, the chairman of the committee, told the Congress: "The Ways and Means Committee worked over this legislation in executive session for more than a month and carefully considered every part and phase of the broad problem of social security. The proposed bill has been entirely rewritten and important modifications have been made at many points. The fundamental recommendations of the President and his Committee on Economic Security, however, are embodied in the new bill reported to you."<sup>15</sup>

The passage of minor legislation, that legislation affecting the internal operations and the scope of authority of the bureaucracy, is pretty well controlled by the departments themselves. They suggest the need for additional legislation, and if sufficiently important their request will be bolstered by a short message from the President. It is somewhat difficult to cite what legislation the departments specifically want, for their requests for legislation appear in a large variety of forms; they may ask for it in the President's message, in their annual reports, in a letter to the proper committee chair-

<sup>15</sup> Representative Robert L. Doughton, *Congressional Record*, April 11, 1935, p. 5467.

man; or they may persuade sympathetic friends to introduce and support the legislation. But in whatever form the department may initiate legislation, it is the departments who largely supply the committees with the necessary information and who expedite the passage of bills they approve.

The departments cannot ask for any law they choose and expect Congress to consider it. Before departmental legislation is submitted to Congress it must first be submitted to the Bureau of the Budget to determine whether it is in conformity with the President's fiscal and legislative policy. The legislative functions of the Bureau of the Budget have been little publicized but the Bureau's influence is frequently commanding. The Legislative Reference Section of the Bureau of the Budget thoroughly examines all proposed departmental legislation before submission to Congress and also examines all legislation after it is passed by Congress. If it does not approve of a bill passed by Congress it prepares a veto message and suggests to the President reasons why he should sign it. There is no public record available of the influence of the Bureau of the Budget over presidential vetoes, but it can be said with assurance that its influence is very great. The Bureau of the Budget makes no attempt to persuade Congress to pass legislation (this is left to the departments), but if the Bureau disapproves of legislation, it has many means for assuring that this legislation is not placed on the statute books.

There is not always unanimity of opinion on policy among various government bureaus, and the Bureau of the Budget therefore attempts to resolve conflicting interests before they are submitted to Congress. Occasionally, however, the conflicts are so deep-rooted that the President or Congress must be the final arbiter. For instance, the controversy in October 1941 between Donald Nelson and Henry Morgenthau over Morgenthau's proposal to limit profits to six per cent was so essentially political that it surpassed the bounds of the jurisdiction of the Bureau of the Budget.

The bureaucratic influence over legislation in the Congressional hopper is often commanding. Departmental heads are technically disqualified from introducing legislation, but this barrier is easily hurdled by the processes already described. Although the bureaucracy cannot always be assured of the legislation it wishes, it can almost certainly prevent any legislation which it does not want. The presidential veto coupled with the careful surveillance of the Bureau of the Budget makes it almost certain that no bills will be passed which are neither needed nor wanted. The influence of the bureaucracy goes further than approving legislation; it also extends to influencing Congress to pass legislation which it wants. The strands which bind together the administration and Congress are many and strong and often invisible. These strands extend beyond presidential leadership and party control; they include

friendship of the administrator and the Congressman, influenced perhaps by common sympathy with the ends sought for in the legislation; personnel appointments, including a very close Army-Navy-Congress relationship, due in part to Congressional selection of the service-school appointees and to officers attached to Congressional committees; departmental publicity; administrative agents in the field; and departmentally inspired protests. And there are others.

Congress has at times balked at administrative attempts to influence legislation, and certainly some of the practices most irritating to Congressmen can be checked. Requests, supposedly inspired in Washington, asking field agents of the National Labor Relations Board and the Work Projects Administration to wire Congress for increased funds have been bitterly opposed in Congress. There were indications that the farmers' march on Washington in 1934 was inspired by the Department of Agriculture. Because Congress and the administrators are so vitally interested in the same subject, the maximum amount of communication should be maintained; and although there is some inexcusable friction, it is extremely difficult to define adequately "allowable" administrative influence.

For better or for worse, Congress and the President are bound together in the legislative process because neither can act without the consent of the other. To make our government more effective, it

is not necessary that the present gap be widened; rather institutions need to be devised whereby the President and Congress can carry on their work more harmoniously. The relationship is tenuous enough now without purposely breaking down the confidence between the two; without, for instance, strengthening the dogma that Congress should act independently of the President. Such a separation does not mean that the specialized knowledge of the administrators will be replaced by the specialized knowledge of Congressmen. That type of knowledge the Congressmen do not have. It means, rather, that the specialized knowledge of the administrators will be replaced by the specialized knowledge of interested groups. If the administration is not allowed to co-operate with Congress there are other groups, most of whom have an ax to grind, which are able and willing to supply Congress with the necessary leadership and the necessary knowledge.

### § 3. *The Political Parties*

The chief function of the party conventions is to name a candidate for the presidency; their function is not to formulate a legislative program and to make certain that their members adhere to it. The party conventions devise a platform, it is true, and in a rough way the Members of Congress are supposed to follow to this platform. The fact is, how-

ever, that the commitments of a party platform lie even less heavily on a Congressman than on the presidential candidate. Between conventions the large and cumbersome national committees act as the head of the parties, but they have no very close relationship with and very little sanction over the voting of the party members in Congress. The influence of the national committees is generally directed toward patronage problems in the states rather than toward the broader legislative program.

The presidential elections, however, establish a rudimentary form of party responsibility by compelling Congressmen to take sides on great national issues. Once a Congressman is elected he can be pretty choosy about voting for the program sponsored by his party leader, but at election time he must either support his party's nominee or perish. There are few public figures who can be as aloof as was Al Smith (not then an office-holder) in 1936 when he took his well-publicized walk. Even a Borah never bolted the Republican ticket, no matter how much he may have disagreed with the candidates' policies. Even a Clark or a Wheeler supported Roosevelt in 1940. No matter what soul-searchings it may cause, once every four years every Congressman is virtually forced to stand up and be counted. The party thus becomes the tie that binds the presidency and Congress.

In spite of their loose organization and their lack of discipline, political parties do attempt to span the

cleavages and frictions in our society and, in a rough way, to plan a national program. It is done better by political parties, at least, than by any pressure groups. Identification with a national party means that one is willing to think in national terms, and that one places the national interest above one's own group or personal interest. The American political parties are less than purely rational groups possessing well-defined programs for conducting the government; but they are more, too, than an association of interest groups on the make. The parties are composed of large interest groups, but the groups are glutinous rather than glomerate. That is, the feeling of party loyalty, the sense of historical importance and continuity, the sobering responsibility of power, the necessity of co-operating with other groups having diverse interests, combine to make the parties fairly cohesive units whose whole is greater than any of its parts.

The national parties could do much more than they do now in adequately informing the electorate of the issues of the day and in taking great precautions that valuable members are re-elected to Congress. I will not discuss here the techniques which the national committees could use, but I will say that there are many methods which the national parties have not yet availed themselves of. In addition, they could exercise much more ingenuity than they have exercised in training and developing new political leaders. They should also see that the members who

follow a broad national policy are politically protected, so far as possible, but they should confine this protection to the members whose voting record reflects a national point of view. The so-called purge of 1938 was a well-meaning but clumsy attempt to make the Democratic Party more truly national in outlook.

It seems to me that the national political organizations should be vitally interested in what members are going to carry the party label into the fall elections. Although the state or the Congressional district has the power to select the party nominee, I see no reason why the national organization should not be allowed to make known its views. This is not an invasion of the rights of the states, but, rather, it is presenting all the facts to the voters so they will be better able to discern the real issues. To raise the issue of States' Rights, as is so often done, is, of course, to draw a smoke screen over the whole question. Whenever a man is nominated for Congress, there are numerous interest groups, organized on a national scale, which are allowed to express their preference for candidates in a party primary. I can see no reason why the national political organizations, which represent a broader point of view, I believe, than any pressure groups, should not also be allowed, or even invited, to express their preference of candidates.

The consequences of depriving the national party organizations from participating in the nomination



and the election of candidates for Congress are clear. It means that we shall have no national political organization capable of forming a national policy. It means, too, that we shall give the green light to highly organized pressure groups who know what they want and how to get it. I believe that it is essential to the welfare of the country that national political organizations, which alone attempt to formulate a complete national policy, should be allowed to participate much more actively in state-national elections than they now do. When the issues are purely local, such as the question of floating a bond or building a new schoolhouse, the participation of the national party is, of course, not needed. But the election of national officers has a significance much more than local and it should be decided by having the various national points of view well represented.

The political leadership of the minority party is very complicated for it has never been determined whether political leadership reposes in the defeated candidates, in a former President (or presidential candidates), in the chairman of the national committee, in the leaders of the House or of the Senate, or in future aspirants for the presidential nomination. The position of the defeated presidential candidate is especially anomalous. In one very real sense the defeated candidate is the leader of his party, yet there is no institutional means by which this leadership can be exerted. The vigorous stand taken by

Mr. Willkie after his defeat in 1940 brought this question to the fore. Mr. Willkie assumed the title of "leader of the loyal opposition," a title filched from the British political vocabulary. Before the Willkie pronouncement it had been assumed that political opposition should be institutionalized in Congress. Mr. Willkie, however, attempted to short-circuit the Congressional leadership by claiming that he, personally, was the leader of the twenty-two million citizens who voted for him. He ignored the fact that approximately the same number had also voted for Republican Congressmen whom they also expected to look after their political interests.

The question of minority political leadership can ordinarily take care of itself through the innate ability of some member of the opposition to lead, or through plain opportunism; and I see little need to institutionalize the leadership of the minority through some device such as giving the defeated presidential candidate a seat in Congress. Mr. Willkie's self-anointment as leader of the loyal opposition can be looked on as an attempt to carve for himself a place in the national life in order that his presidential availability would not sag. For many years the Democratic minority clustered around the personality of William Jennings Bryan, even though Mr. Bryan was never able to lead his party to victory. This was the type of minority leadership for which Mr. Willkie made his bid.

To give the defeated candidate a seat in the House

or the Senate, as is often suggested, would provide a forum from which the candidate could express his views, but it would not give him a position where he could exert much power. He would not be in a much better position to run again for President than if he were not in Congress. And if the President wished to form a coalition cabinet, the logical place for the defeated candidate would be in an administrative position rather than in Congress. The record of defeated candidates shows that their political futures depend more upon their aggressiveness and personality than on having a seat in Congress. If the candidate failed to make a comeback, Congress would be replete with political has-beens repudiated as standard-bearers by their own party, whereas if the candidate made a comeback, it does not seem to me that service in Congress would contribute vitally to it.

A form of opposition more usual than leadership is opportunism, a method treated in more detail in the consideration of legislative strategy. The opposition cannot easily be forced to formulate a policy of its own, nor is it always necessary if the policy of waiting for blunders of the majority party brings successful results. The minority party can afford a babel of voices, a confusion of advice, which would be suicidal to the majority party. The real question in political leadership, however, is not whether the opinion of the minority will be voiced by Congressional leaders, by defeated presidential candidates,

or by party spokesmen. The important question is the method by which the heterogeneous elements of the majority party can be organized to support a responsible party program.

The place or the function of third parties in American politics cannot be easily assayed, but they too have a share in leadership. It is a part of American folklore to assume that third parties are radical parties, that from the long-run point of view they are right, and that they die because the older parties absorb the cream of their ideas. Allan Nevins, for instance, says: "The function of the extreme radical is always assigned to third party groups. These groups arise in times of discontent; they inoculate the older parties with whatever part of their program time proves to be sound, and then they wither away."<sup>16</sup>

Third parties present such vagaries of policies that they cannot easily be identified with radicalism, economic discontent, or fountainheads of ideas for the older parties. Occasionally third parties represent defections of conservatives rather than of radicals. The 1896 presidential candidacy of the gold Democrats is a case in point. A later illustration is Roger Babson and the Prohibition Party in 1940, a minor movement at best and one outside the bounds of ordinary liberal-conservative political analysis. The Bull Moose movement represented the politically,

<sup>16</sup> Allan Nevins in *New York Times*, Magazine Section, January 12, 1941.

as well as the economically, discontented Republicans. The Populists of the 1890's and the La Follette movement were the strongest third-party movements since the Civil War; they appeared because no major party claimed their allegiance, and they withered away, being absorbed first into Bryanism and later into New Dealism. The 1936 Union Party of William Lemke, Father Coughlin, and Dr. Townsend contributed neither political sagacity nor economic solution and quickly faded away.

The failure of third parties lies partly in the political incompetence of the leaders. In 1940 the Socialist Party was given a splendid chance to be the vehicle of protest against the aid-to-Britain policy of the Republicans and the Democrats. Norman Thomas, however, received less than 150,000 votes, a dismal showing by any standard. This vote demonstrated that the Socialist Party has little dynamic appeal, that the vote came largely from regular Socialist voters, and that the party was unable to persuade several million voters that their attitude and the Socialist Party's attitude on foreign policy were identical. Far from being a radical protest, the Socialist Party represented only the opinion of traditional Socialists who have little interest in actually gaining and exercising political power.

*§ 4. The Public*

Congress is also led by pressure groups. I do not mean this in any critical sense; there are few political ideas about which there has been so much misunderstanding, for many believe that pressure groups are sinister, covert, surreptitious, and that they should be shunned and condemned. At one time or another most voters associate themselves with pressure groups, and, to speak a kind word for such groups at the beginning, one can say that they are an integral part of the democratic process. I define pressure groups as any association which makes an attempt to secure legislation. These associations may be business groups, labor groups, farmer groups, or missionary societies interested in giving relief to the inhabitants of conquered countries.

A good example of pressure group legislation is the Railroad Retirement Act. Representative Keller's statement in the House in introducing this legislation is significant because it points out that the impetus for the legislation came from pressure groups and because it shows that the function of Congress in this instance was to formulate an effective compromise between various demands. It should be noticed that the compromises were effected in the committee room, rather than on the floor of Congress, and the bill was not drafted by

Congress but by an attorney for one of the interested participants.

"Nearly three years ago . . ." Keller said at that time, "I introduced the original bill of which this present railroad pension bill is the outgrowth. . . . This was known as the rank-and-file pension bill formulated by the Railroad Pension Association, and introduced into the Senate at a later date by Senator Hatfield. At a still later date, Senator Wagner and my colleague, Hon. Robert Crosser, of Ohio, introduced a bill sponsored by the 21 railroad labor executives. Upon these two bills the Senate Interstate Commerce Committee held extensive hearings over a period of three weeks, with leading pension and insurance actuaries and attorneys representing the railroads, the rank-and-file railroad workers, and the railroad labor executives. . . . At the end of this exhaustive hearing the committee requested the rewriting of the pension bills by counsel in view of the evidence brought out. Mr. Donald Richberg, representing the railroad labor executives, having become chief counsel of the N. R. A., was unable to participate in this work of rewriting the pension bills. That work devolved upon Mr. Herman Eckern, attorney for the rank-and-file."<sup>17</sup>

The frequent objective of pressure groups is the securing of amendments to legislation rather than the passage or the defeat of a bill. For instance, busi-

<sup>17</sup> Representative Kent E. Keller, *Congressional Record*, June 15, 1934, pp. 11704-5.

nessmen interested in the question of the taxation of excess profits concentrate their attention on amending this particular aspect of a revenue bill rather than attempting to defeat the bill as a whole. Given the great power of committees and of individual Senators, it is not too difficult to amend bills to fit the needs of adamant pressure groups, and the President is forced to accept or reject the bill as a whole: he cannot veto parts of it. An instance of what President Roosevelt termed "sharp legislative practice" was the action of Senator Tydings, of Maryland, in securing the adoption of the so-called Resale Price Maintenance Law in 1937. This bill was a piece of pressure-group legislation sponsored by the Retail Druggists Association, an organization which shrewdly employed a member of Tydings's law firm as counsel. The purpose of the bill was to suspend the operation of the anti-trust laws by allowing the manufacturer to set the price at which certain articles could be sold at retail. Tydings persuaded the Senate to attach his amendment as a rider to a District of Columbia revenue bill. President Roosevelt was placed in the embarrassing position of accepting the obnoxious Tydings rider or of vetoing the much needed revenue bill. He finally signed the bill, but protested vigorously against the rider.

The old-type political lobbyist is almost passé; that is, the lobbyist who buttonholes a Member of Congress — in a lobby — and requests him to sup-



port a specific piece of legislation. Pressure-group techniques have been streamlined, and the present accepted method is for the constituents, rather than the lobbyists, to appeal directly to their Congressman. In fact, the Congressman learns about the status of much pending legislation through communications from home. He receives a wire from constituents stating that Senator Gray has introduced an amendment deleting lines 8 to 21 on page 17 of House Bill 7974; the constituents ask the Congressman to support this amendment and to wire immediately the assurance of his vote.

One cannot categorically call pressure groups either good or bad. In evaluating their worth one must use other criteria. In many cases these groups perform a real function by supplying the government with factual material and in acquainting it with legitimate desires of various groups. Such an instance was the Railroad Retirement Act, where full publicity and full discussion were given to the proposal, and it was passed on its own merits.

A weakness in pressure-group legislation is that these groups think primarily of their own welfare and not of a policy beneficial to the public. Demarest Lloyd once caustically remarked that the Standard Oil Company had refined everything in Pennsylvania except the state legislature. Another weakness is that many groups are under-represented, and other groups, through their highly specialized knowledge of legislative technique and from other

causes, are able to exercise influence far more than commensurate with their political backing or with the justice of their demands.

It is necessary to strain the demands of interest groups through some institution with a broader concept of the public interest. If Congress should become independent of administrative influence, as some people claim it should, it would be easy for pressure groups to supply Congress with a type of leadership which would be limited, narrow, and aimed at benefiting particular groups. To suggest that Congress, stripped of administrative influence, would act "according to its own conscience" without being influenced by any group is not only being unrealistic but injecting an air of mysticism into politics. The interest of special groups should be considered by Congress, of course, but a broad public policy cannot be formulated by turning the process of legislation over to those with axes to grind.

One of the most recently developed methods for influencing Congressional action is the public-opinion poll. The polls are of such recent origin that it is not yet possible to evaluate their effect in framing policy. It is not known, for instance, whether polls deaden the initiative of political leaders by making them timid in enunciating a policy which does not have fifty-one per cent backing; it is not known to what extent the polls might raise confusing and embarrassing issues; it is not known whether skilled legislators can stay in office by following the

polls in their votes; it is not known to what extent election polls cause band-wagon rushes, although certainly the manner in which the press plays up the result of a poll must also be considered. The question of the phraseology of the polls, while important, is not unanswerable, for, granting intellectual honesty, phraseology can be improved so that the issues are fairly represented.

Even though there are many questions concerning public-opinion polls which cannot be answered, certain reflections can be made regarding their operation. In the first place, the number of questions which polls can ask is limited compared to the number of questions which must be resolved daily by Congress and the administrators. The polls are confined to asking broad, non-technical questions about which the public has some opinion. For instance, in May 1942 the Senate debated vigorously a proposal to abolish the revolving fund of the Tennessee Valley Authority and to substitute a method of annual appropriations by Congress. The effect of this proposal would have been to give a large amount of authority over TVA appropriations to a Senator who at that time was hostile to the agency. This question was essentially political and it vitally affected the operation of an important governmental agency. However, it would have been difficult to have phrased a proper question for a public-opinion poll and it would have been out of order to expect the public to know very much about the problem.

Although the scope of questions that can be asked is limited, the type of question is limited only by the political propensities of the group which conducts the poll. The scientificness of polls goes no further than the method by which public opinion is tabulated; the questions which are asked are definitely political. One of the most important functions of operating a government is the power to raise the issue to be resolved; the greatest power of the Roman tribunes, for instance, was the power to preside over the assembly of plebs so that they could ask the plebs to consent to the issues formulated by the tribunes. Some states whose constitutions provide for popular referendums exclude certain questions, such as civil liberties, from the scope of questions which may be asked by the referendum method, for the assumption is that some political questions must be placed in a different category from others.

Likewise, public-opinion polls are able to ask questions which might hinder the operation of the government or which might be so definitely political that the polls should be classed as another pressure group. The polls could hinder the operation of the government by asking, for example, whether the Mexican government should be forced to pay in full for all oil expropriated, and they could ask this question during a process of negotiation with the Mexican government over this question. During a military crisis they could ask the abstract question

whether a negotiated peace is the most desirable way to end a war. If a President were holding power by a narrow margin of votes, they might be able to undermine his position by continually emphasizing the margin of his support, but if the margin dropped below fifty per cent they would be unable to provide an institutional method for changing Presidents. After a military victory in the Far East, say, they could fire the first gun in a political campaign by asking how many would support MacArthur for President in 1944 or, being more adroit, they could ask how many believe MacArthur would be able to fill the office of the presidency. They could plump for prohibition by continually keeping the issue before the public and by conducting selective polls at strategic times. If they attempt to create issues or to favor certain issues by reiteration, they should be considered in the same category as other propaganda pressure groups.

A third consideration is that the significance of questions fluctuates greatly. The polls do not show the intensity with which certain questions are answered; and for this reason they do not show whether the public will be of the same mind in a month, six months, or a year. A conscientious legislator cannot safely rely on the polls to inform him how to vote. Leadership is a necessary ingredient of the legislative process, and leaders must not only reflect the prevailing public opinion but enunciate opinions — perhaps poorly supported at the

time — which will have popular support at some time in the future. The best legislators are interested not only in what the public thinks at any given moment, but also in what the public will be thinking in the future. They know that public opinion fluctuates as events change or as additional information is disclosed, and the best legislators must anticipate these changes — that is, they must not only reflect public opinion, but lead public opinion by sponsoring proposals which will later be accepted but which might rate low in a poll before the public has sufficient time to think the matter over. It does a Congressman little good to know that his district was opposed to fortifying Guam in 1939, and he so voted, and that his district was opposed to arming ships in 1941, and he so voted, if in 1942 his district calls forth the wrath of the gods on those legislators who were short-sighted in their votes on foreign policy.

Congressmen who are real leaders of public thought must out-think the polls, for the response of the public on any particular question may change, and the question itself may change. A Congressman is responsible to two constituencies: the one which elected him and the one which (he hopes) will reelect him. He is committed by promises to the former, but the latter will judge his actions; whatever may be the popular whim at the moment may not be popular with a somewhat different electorate, come next election.

## CHAPTER III

### WHO HAS POWER TO DO WHAT?

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1. *The Lone Congressman.*
  2. *The Political Bosses.*
  3. *The Committee Chairmen*
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#### § 1. *The Lone Congressman*

I KNOW just the man in Congress who can get that done." So says the lobbyist to his client; the lobbyist probably does know the right man; the job is done; and the lobbyist gets a fine fee for his expert knowledge of legislative procedure.

"Now, Senator, I know you are the one man who can really do this, and I expect you to follow through." So says the constituent with abiding faith in the ability of his elected representative to get things done; the Senator probably can't do the job and is nettled that he has been asked, and the constituent is peeved because he believes that his Senator has willfully let him down.

The mosaic of Congressional power is confusing to anyone without a professional knowledge of how Congress operates. A number of individuals and a number of groups within Congress have power, but the reasons for their having power and

the limitations on their use of it cannot easily be explained. The Congressional system allocates power to a number of individuals and groups for reasons which are not always consistent and which are frequently not understood by the ordinary layman.

If you look at a chart showing the lines of power within Congress, you will have a theoretical knowledge of how power is distributed. Charts are deceiving, however, for in any organization the actual lines of power short-circuit and by-pass the theoretical structure. In Congress the arrangement of power is baffling to those without a detailed knowledge of the rules of Congress and of the parties, of the manifold personalities, and of the tremendous influence exerted at times by the various power groups within the Congressional structure. There is, in fact, no systematic arrangement for allocating power within Congress. A skilled observer can generally tell what factors might determine Congressional behavior at any particular time, but he cannot write a formula describing accurately the power structure of Congress. It is unsafe to generalize too far on the method for formulating public policy within Congress and within the party organization which operates Congress.

The distribution of power in Congress is in many respects similar to the game of button, button, who has the button? One knows that someone has the button, but it is at times difficult to tell precisely where it is. The responsibility for action lies in many



hands and in many groups. As soon as you think you know where the responsibility lies, where the button is, it is slipped to someone else. The internal organization of Congress is so involved and so complicated that only very few men, and they specialists in the legislative process, know who are the individuals and the groups concerned with any specific piece of legislation, and there is hardly a man alive who can solve the mystery of Congress for every issue that comes along.

The problem of allocating political power in Congress has been a nettling question since the beginning of our government. Government demands action, and action demands that the party in office control the pivotal positions of power. If elections are to have meaning they should be reflected in the power structure within Congress. It is also necessary to distribute power so that Congress can impartially assay the results and the benefits of the legislation it enacts. This type of power should be utilized, in the narrow sense, in a non-partisan manner, and it calls for the use of experience and the tolerance and sympathy of men with broad vision.

A satisfactory method for allocating power so that the amorphous will of the electorate is adequately expressed and so that the ambitions of various Congressmen are satisfied has not yet been found. Conflicting claims for power are made by several different groups. They are made by the political leaders who are elected by their party; they are also

made by those most recently elected, thus claiming a mandate from the people; they are also made by the minority party who ask for practically equal representation on all committees and more than an even break in time consumed. They are made by the numerous legislative committees who fight for their rights against the claims of other legislative committees and of the rest of Congress. They are made by individuals who claim that their wishes should be respected regardless of the committee structure or the political structure of Congress and regardless of the trend of the election returns. Should power be centralized or decentralized; should power be given for reasons of seniority, of geography, or of popular support; should the committees have a controlling influence over legislation; how should the committees be appointed; what should be the power of the caucus, of the leaders of the majority party, and of a transient majority? These questions have been answered in different ways, but they have not yet been answered definitively.

To make a very broad generalization, there are two types of leadership in Congress: political leadership and committee leadership. It is frequently difficult to distinguish between them, to tell when one authority defers to the others, for they are like two rivers which frequently flow in the same channel. Some political leaders are officially chosen by their party by open balloting in the party caucus; they

are generally the official spokesmen for the position of the administration. Other political leaders have no official position but acquire their power either by their own force of persuasion or by their willingness to utilize the rules of Congress to their own advantage. The committee leaders acquire their status through seniority.

If any Congressman wishes to be a national legislator, he is thwarted by a system in which political power is allocated mechanically and where he must share the blame for failure of the party without participating in many of the rewards of its success. Even a legislator who synchronizes both a national point of view and Congressional power acquired through service in the hierarchy of Congress does not ordinarily become the political administrator of his special field. Representative Marvin Jones, of Texas, for instance, came to Congress in 1917 and under the New Deal became chairman of the Committee on Agriculture. He ably supported the program for agriculture sponsored by the Democratic administration. When the New Deal came into power, the post of Secretary of Agriculture was given to Mr. Henry Wallace, of Iowa. Although this was an excellent appointment, it illustrates the limitations of acquiring political power through the legislative process. Mr. Jones resigned from Congress in 1940 to accept an appointment to the Court of Claims. His resignation is not understandable unless it is realized that Mr. Jones could not readily

expect further political advancement; that his tenure of office was insecure because of biennial elections; that, if defeated, he might not make a come-back, nor could he be given a seat from a safe district; and that if he became a *Lame Duck* through defeat at the polls, he would be in a less advantageous position to ask for political favors.

Most of us wish that our Congressmen were men of broad vision, interested primarily in advocating the best policy for the country as a whole. The great positions of power within Congress, however, are not given primarily to those who are especially able or extraordinarily far-sighted. Congress is not a place where able men or young men can quickly achieve power. If Alvin H. Hansen, the economist, or Robert Hutchins, the president of the University of Chicago, were elected to Congress, they would be lucky if placed on financial or educational committees, in which they would be specialists, and it would take a dozen years or more before they could reasonably expect to head those committees. Or if a man such as Wendell Willkie were elected to Congress, he would not be given a position of power commensurate with his abilities as a leader. Rather, he would more likely be placed last on some committee such as that on Inter-Oceanic Canals.

It is possible, of course, for individuals to carve for themselves places of great authority within the Congressional power structure even though they have no official party position and are not chairmen

of important committees. This power can be used either to propose or to obstruct, and from the nature of the organization of Congress it is easier to use the power for the latter purpose. But in whatever way it is used, the legislator is responsible only to his state or his district for his actions; no matter to what extent he may influence national policy, the voters of the nation have no means either of punishing or of rewarding him.

The personalities of Members of Congress play a large part in determining the legislative output of Congress. The issues which seem so clear in the minds of the people become blurred in the legislative process when intertwined with personal conflicts or personal affections of the various members. In examining any roll-call vote in Congress, the votes of many members can only be explained by the personal influence of other members. To cite a very notorious example, on the Monday following the attack at Pearl Harbor, Congresswoman Jeanette Rankin voted no on the resolution declaring war against Japan. Three days later, however, when the resolutions declaring war against Germany and Italy were being considered, Miss Rankin merely voted present.

With intelligence and perseverance an individual Congressman may persuade his colleagues to adopt epochal legislation, as Senator George Norris did when Congress created the Tennessee Valley Authority. But the power of individual legislators can

also be used to obstruct legislation, and no one has any recourse against their actions. For instance, in July 1940 the State Department submitted a convention to the Senate to establish an Inter-American bank. A subcommittee of the Committee on Foreign Relations studied the convention and submitted a report recommending its acceptance; however, comity required that the Banking and Currency Committee also be consulted, and, as a courtesy, the enabling legislation was sent to that committee for consideration. The acting chairman of that committee, Senator Carter Glass, did not like the legislation and for many months refused to bring the subject to the attention of his committee or to take any positive action whatever on the convention. Two years after the submission of the convention, Senator Glass was still able to prevent the Senate from taking any action, even though the convention would probably have been approved by the Senate and had already been approved by certain other countries in the Western Hemisphere.

## § 2. *The Political Bosses*

The political leadership in Congress is a great stabilizing force, for it has the very important function of determining, in a measure, the tempo and the content of legislative output, of co-ordinating the wishes of the administration with the wishes of the Congressional committees, and of supporting,

or at least explaining, the actions of the administration when challenged by critics. The political leaders do not necessarily formulate policy themselves; the object which demands most of their attention is devising the strategy necessary for enacting legislation which they want and for preventing the enactment of legislation which they do not want.

There is a peculiar tendency in Congress to play down the underlying political organization, to treat this organization as something belonging to the nether world which should not be mentioned very loudly. It is significant that in the *Congressional Directory* the actual political organization of Congress is very incompletely recorded, and I know of no other publication where it is recorded at all. There is scarcely any mention made in the *Congressional Directory* of the majority and minority leaders, of the whip organization of both parties in both Houses, of the political units which select members of the committees, of the officers of the caucuses or conferences, and of the membership of the Congressional and Senatorial campaign committees; yet to a considerable degree the political power structure of Congress is the most important of all Congressional organizations.

The effective political leadership in the House rests with the Speaker and the majority leader, and these two men have more power than corresponding officials in the Senate. The leadership, however, is personal rather than institutional, and the effective-

ness of its operation can easily be ruffled by the failure of adamant power groups in the House to cooperate. The Speaker and the majority leader must share their powers of leadership with other political groups and with the committees.

The present organization of the House is not the result of any reflective thought of the actual needs for political power in enacting legislation; it results from a compromise developed in the aftermath of the great fight during the Taft administration over the leadership of Speaker Cannon. The concentration of power in the House reached its apex at that time, but the answer which the House then gave to the so-called abuse of the Speaker's power was to demolish the importance of the office without removing Cannon. Speaker Cannon was able to exercise a commanding influence because he could name the members of the committees; because, with two other majority members on the Rules Committee, he could say what legislation should be considered; and because, as a result of his power of recognition, he could dictate who could speak. The first two of these powers were taken from the Speaker; the last he still possesses, but no Speaker since Cannon has used the power of recognition so ruthlessly. The concentration of power in Cannon's hand made it possible for party government to function. When the insurgent Republicans found the policy of the party galling, they tried to change the policy by changing the rules for ex-



exercising power rather than by attempting to control the party organization. Although professing membership in the Republican Party, they found party discipline distasteful, yet they were unable or unwilling to run the party themselves.

One of their members, Representative Nelson, of Wisconsin, complained at that time: "All that men prize here of patronage, of privilege, and of power, we have had to forego for the sake of principle. Have we not been punished by every means at the disposal of the powerful House organization? Members, long chairmen of important committees, others holding high rank — all with records of faithful and efficient party service to their credit — have been ruthlessly removed, deposed, and humiliated before their constituents and the country because, forsooth, they would not cringe or crawl before the arbitrary power of the Speaker and his House machine."<sup>1</sup>

The movement to break down the power of the Speaker was a part of a belief then current that the correct answer to political questions will be evolved if power is widely enough dispersed. The reform effort was not directed toward gaining the instruments of power which could be used for a stated end, but rather toward tearing down the instruments of power. It was a peculiar thesis that one could break down the institutions of power, and that pol-

<sup>1</sup> George Rothwell Brown: *The Leadership of Congress* (Indianapolis: The Bobbs-Merrill Company; 1922), p. 158.

icy would develop from the people with no institutions to make the policy effective. If the insurgents had joined the Democrats in voting for Clark and against Cannon for Speaker, they would have had an influential part in the organization of the House and in shaping public policy. They chose, however, to be bound by party ties at the very moment when their insurgency would have been most effective. They were willing to break down the instruments by which the Republicans ruled, but they were not willing to assume the responsibility for operating those instruments themselves. Since the Cannon revolt the House has tried several methods of allocating power to its political leaders. The result of the revolt was decentralization, and in theory the political organization is decentralized to the point of chaos. On the other hand, political bodies need leadership, and overlying the theoretical decentralization of power in the House is the leadership of the Speaker and the majority leader.

The power of the leaders over legislation is not defined legally, and the sanctions which they have over the behavior of other members is not always very effective. The actual sanctions which the leaders possess are the control of time and the control of legislation to be considered, but these powers are by no means complete and some of them must be shared with other political power units within the House. But if the leaders cannot always lead, the followers cannot easily overturn the political leader-

ship. The present political leadership of the House is handicapped because it cannot always determine what legislation is to be considered, because it does not have much control over the content of the legislation reported by the committees, and because its control over the party members is often tenuous.

The determination of what legislation the House should consider is largely in the hands of the Committee on Rules. This committee is especially important because it can determine what major bills should be brought before the House, how much time should be allowed for debate, and what type of amendments should be permitted. The committee has been described by Representative William B. Bankhead, of Alabama, as "the political and policy vehicle of the House of Representatives to effectuate the party program and the party policy."<sup>2</sup>

The failure of the Rules Committee to report a rule for considering a bill is a very effective veto over that bill. Under the Cannon regime the Speaker was one of the three majority members of the Rules Committee, but the present distribution of power not only excludes the Speaker but places ten members from the majority on the committee. The committee is ostensibly a political committee whose purpose is to aid the chosen leaders in promoting a legislative program. The Rules Committee can do pretty much as it pleases in reporting rules for

<sup>2</sup> Representative William B. Bankhead, *Congressional Record* March 21, 1933, p. 666.

the consideration of legislation, and occasionally administrative leaders have found the committee a very serious obstruction. Under the chairmanship of Representative John J. O'Connor, of New York, the Rules Committee did not always co-operate with the leadership of the House, the most notable case of non-co-operation being the consideration of the Wages and Hours Act, when it was necessary to force a rule out of the committee by means of a discharge petition signed by a majority of the House.

The power of the Senate leaders is both greater and less than that of the House leaders. It is less because the leaders do not have as efficient machinery to determine what legislation is to be considered; they cannot regulate the length of debate; they have very little say about who should speak; and they do not have as many sanctions over the voting of the party members. In other respects, however, the political power of the Senate leaders is greater than that of the House leaders. The Senate leaders do not have to share their power with other power groups, such as the Rules Committee in the House.

The office of the Senate majority leader has developed into a position of real significance, although the political machinery he manipulates is almost non-existent. His position is important in planning the legislative program, in devising legislative strategy, in advising with the President on questions of policy, and in acting as the authoritative spokesman

for the administration. The Majority Leader does, in theory, have the support of a whip organization, but this function is largely carried out in fact by the Secretary of the Majority, who keeps the majority leader constantly informed of the administration's voting strength on any particular issue.

One method by which party policy within Congress can be enunciated is through the party caucus, but this method of determining policy has long been discredited and is now little used. Most Members of Congress prefer to be free agents, to be allowed to vote as they please rather than be bound by the party. The party caucus is still used in organizing the House and the Senate — that is, in selecting the Speaker of the House and the majority leaders of the House and of the Senate — but it is not frequently used for binding party members to a specific program. The Republicans especially have practically abandoned the caucus; they have rechristened this ancient word with the euphemistic name of conference and have made its conclusions purely advisory. The members can follow the caucus decisions or not as they choose. The use of a joint party caucus (for members of the same party of both Houses) is unheard of, although the Republicans did experiment with a Joint Steering Committee in the 1920's. In the troublesome year of 1939 some Democratic members of the Senate asked that a caucus be held to redetermine party policy, but Majority Leader Barkley felt that to call such a

meeting would be equivalent to repudiating his leadership and threatened to resign if such a meeting were held. No meeting was held.

On the face of it, the reluctance of the party to commit its members to a program after full discussion and a two-thirds vote might seem like a victory for the freedom of the individual. In truth, however, it means that Congressmen prefer to be free to advocate local interests rather than be bound to vote for a broader national program. Freedom from party control means, in a word, freedom from assuming responsibility for a national program. From a national point of view, the ability of Congress to advocate local interests may not be wise, but it is practical from the viewpoint of the Congressman. No matter how much a Member of Congress may wish to vote nationally, he knows that to stay in power he must cater to his own constituency. Moreover, the national party organizations make little attempt to protect those members who jeopardize their positions by voting nationally or to replace those who are dangerously short-sighted and local in their voting. Congressmen are thus often forced against their better judgment to place local interests above national interests.

The extent to which a member feels obliged to go along with the party varies greatly. Party loyalty is strongest on the votes to organize the House and the Senate; it is rare for a Congressman to vote against his party on such proposals as choosing a

Speaker of the House or a majority leader of the Senate. But after the organization vote, party loyalty fluctuates widely, and in subsequent votes new alignments are formed which are rarely based entirely on the actual political division within Congress. Nevertheless, although each party suffers defections on practically every vote, it is the force of the party organization that enables opinion to be crystallized and allows Congress to act. The regulars who are willing to "go along" with the party, even at the risk of their political future, are an essential part of the legislative process. In every legislative vote the party leaders know that they have a large bloc of party members whose support can be depended on.

Inasmuch as there is no organized method for determining party policy, most Congressmen have a rule of thumb to bound the minimum of their loyalties. Political leaders such as the Speaker and the House and Senate leaders rightfully feel that they should support the administration on all measures with the possible exception of those which cut deeply into the political prejudices of their constituencies. But there are various gradations of loyalty in the rank and file. John Garner once said that it was his practice to go along with his party if he believed that a measure was supported by two thirds of the party membership. On the other hand, Representative John J. O'Connor once said that he would be guided by the wish of the majority of his

party. "I have often said on this floor in the Democratic caucus," he stated in the House, "that whenever a majority of my party favored legislation I would follow the majority rule, which is the key-stone of democracy."<sup>3</sup>

Some state delegations hold caucuses to determine the attitude which its members should take on important subjects being considered by Congress. This method at least establishes party responsibility at the state level, and it also provides clear-cut issues for the constituents at election. It should be remembered, however, that not all of the votes in Congress are party votes, and that before any important vote is cast the proponents and opponents of the measure in question frequently hold informal conferences to plan the legislative strategy which will best secure favorable consideration of the bill or defeat it and to suggest means by which additional legislative support can be secured.

Even though most Members of Congress shun the discipline of the party, many create discipline for themselves by attaching their sympathies to some group within Congress which sponsors laws they approve. One such group was the Liberal Bloc, organized by the enterprising Maury Maverick in 1935 when Maverick was serving his first term in Congress. This bloc was extremely influential for a few years, but although its few members still meet

<sup>3</sup> Representative John O'Connor, *ibid.*, December 13, 1937, p. 1385.



occasionally, it no longer exerts the influence it once did. Other Congressional groups have developed as the result of the war. In the period preceding the outbreak of hostilities no political party committed its members to a policy of isolationism, and to fill this organizational gap numerous bi-partisan meetings between members of both Houses were held to plan isolationist strategy. These various political groups within Congress are, in a sense, competitors of the established parties, but on a small scale only, for their aim is not to organize Congress to determine all measures, but only to promote particular measures. In this way they supplement the work of the party by pointing up issues which might not otherwise be emphasized. These groups might on some occasion pick an issue sufficiently attractive to negate old party loyalties, but such a development is speculative.

### § 3. *The Committee Chairmen*

Instead of there being one legislative body, there are in fact almost a hundred little legislative bodies, known as legislative committees, each busying itself with the consideration of some piece of prospective legislation. Congressional committees are the key to the political power which every Member of Congress covets. The hierarchy of political power and influence is largely built around the committee system. Occasionally a Congressman comes into

public prominence because of his stand on some public issue, but the regularized method for acquiring influence with one's colleagues, and securing power in the Congressional hierarchy is diligent work on committees. Any Member of Congress who follows his own special interests at the expense of actively participating in the work of the committees to which he has been assigned, no matter how dull these committees may be, may soon become a pariah to his colleagues, as the following attack by Senator Clark, of Missouri, on the extra-curricular activities of Senator Pepper demonstrates: "Some of us have been here for weeks and months," said Senator Clark, "while the Senator from Florida has been speaking in the North and the South . . . and in the East and in the West, and even up in Canada. . . . It seems to me that . . . if the members of committees . . . would stay here and tend to their business and report proposed legislation to the Senate we might make better progress." \*

No member has time to study the merits of each of the twenty thousand bills introduced at every Congress, and the Congressional committees serve as sifters for these bills, culling out the dead wood and studying and reporting the bills which they think are meritorious. They are aided in this selection, of course, by the President, the departments, and the political leaders of Congress, but the committees have considerable leeway in selecting the

\* Senator Bennett Champ Clark, *ibid.*, April 1, 1942, p. 3372.

bills which they wish to report and in determining the phraseology of those bills.

The committees are not as important as they were in 1885 when Woodrow Wilson protested vigorously against what he called government by Congressional committees. Since Wilson's day the formulation of policy has been increasingly unified in the President, and the Congressional committees are no longer the predominant policy-forming units which they once were. But they are still extremely important, and the chairman or any strong member of a committee has a voice in determining the form in which legislation is passed. There is often debate, of course, on specific phases of legislation, but, although there are frequent exceptions, the recommendations of the committees are generally accepted. In brief, Congressional committees are important because they can review and modify administrative proposals.

There is no uniformity in the influence or the amount of legislation considered by the various Congressional committees. Some of the committees are very important and do a considerable amount of work; much of the work of other committees is of a routine and tedious nature which could be better done by the departments; and still other committees do very little work. To make a very general statement which, of course, has many exceptions, the members with the greatest seniority are on the most important committees and fre-

quently have more important committee work than they can do adequately. The House limits the number of major committees to which a member can belong to one; but the Senate is much more lax in restricting the activities of its members. I have seen Senators who had as many as three committee meetings to attend in one morning, and, to spread their charm as widely as possible, these Senators were forced to bounce in and out of the meetings much like a debutante trying to make all the cocktail parties on New Year's Eve. On the other hand, the newer members, with little seniority, often dissipate their energies by time-consuming work on relatively unimportant legislation — or in answering their mail, or guiding constituent visitors through Washington and calling up echoes for them in the old assembly hall of the House of Representatives.

Congress does not always have the information necessary to act wisely, in spite of the fact that it has access to thousands of pages of hearings and a multiplicity of governmental reports. Congress is saturated with facts: briefs, petitions, testimony, witnesses, letters, pamphlets, reports, speeches — yet it does not have the time, the inclination, or the means to assimilate this barrage of material which is continually thrown at it. The results which Congress gets for its hard work — and it does work hard — are often not commensurate with the energy put forth. This is caused by the method by which Congress gets knowledge and by its bias toward what

constitutes knowledge. Here, as in other aspects of Congressional life, is found the imprint of the legal mind. The method of the court has been transferred to Congress. The judge feels that if all the witnesses are heard impartially and all the facts revealed, guilt or innocence will be discovered. Congress likewise listens daily to many telling their story, and it hopes that out of this welter of confusion, out of this babel of voices, truth will be found. Hearings, investigations, and reports present Congress with so much material so poorly organized that, with the best of intentions, Congressmen are frequently dazzled into mental numbness.

Congress clearly needs the assistance of a staff which will give Congressmen pertinent information so that they can make up their minds. Such a staff need not be large, and, indeed, there are distinct disadvantages in having a large staff working for Congress. If Congress had a large staff of its own, effective Congressional control would be transferred from Congress to a Congressional bureaucracy; one set of bureaucrats would give orders to another set and the lines of power would be immensely confused. A large staff of Congressional experts would become rivals of administrative experts, and the result might be confusion rather than co-operation.

Congress needs assistance at three different levels of operation. The individual Congressmen need the aid of legislative experts who will assist in handling

the increased legislative and constituent burden placed on Congress by the growing size of the government; committees need assistance in considering legislation and in making investigations; and Congress needs a secretariat which will preserve the continuity of the records of the committees.

The legislative secretary would supplement the work of the present political secretary, whose main function is to assist the constituents in their dealings with Congressmen and with the departments. A few Members of Congress have been foresighted enough to hire research men, but the practice is not uniform and there is no special appropriation which provides for this type of employment. In 1941 the Senate added an amendment to an appropriation bill to provide a legislative expert for each Senator, but the House niggardly refused to accept the Senate's proposal. The legislative and the representative functions require different talents, and if a Member of Congress expects to be adequately informed on legislative and administrative matters, it is almost imperative that he have the services of some aide who will act as his ears and eyes.

The caliber of the men who staff the regular Congressional committees is far from uniform, nor is there much continuity in the staff from chairman to chairman. When a Congressman becomes chairman of a committee, his office staff become automatically clerks on the committee even though their training has been in handling Congressional of-

fice routine. The importance of this employment-transfer is misleading, however, for very few of those listed on a committee staff actually work for the committee; it is customary to assign one or more of a so-called committee staff to work on committee business, and the other employees continue the regular work in the Congressman's office. There is, of course, some specialization in the committee staff, but the degree of specialization varies greatly among the different committees. The Joint Committee on Internal Revenue Taxation and the Legislative Drafting Bureaus are staffed with specialists and are of great assistance to the committees. The activities of these units, however, do not supply Congressional committees with all of the specialized knowledge which they need. For the most part, the committees rely on the administration for this knowledge; and if we are to have one public policy rather than two, this seems to me to be the proper procedure. However, for investigatorial purposes, when independent judgment is required, Congress needs the aid of disinterested experts. For this purpose the greatest untapped source of knowledge and ability is the Library of Congress, which already has in operation an efficient Legislative Research Division. The committees of Congress would profit by drawing more and more on the great resources of the Library.

The records of most committees are not well preserved, and even the files of the major committees

are ordinarily inadequate. The value of committee work is so dependent upon the incumbent chairman that the work of a committee is seldom uniform over an extended period of time. The continuity of the committees would be considerably enhanced if each House would establish a committee secretariat to keep the permanent files, distribute reports of hearings and other public documents, and prepare an annual report on the activities of each committee. Such a secretariat could be established under the direction of the Clerk of the House and of the Secretary of the Senate.

The political leaders of Congress represent, in general, the prevailing sentiment of the Members of both Houses, but the composition of a Congressional committee does not necessarily represent anything in particular except a haphazard cross-section of American thought. The membership of a committee is a composite of men selected over a broad expanse of time for reasons which can never be fully known. If any present Member of Congress was placed on a committee twenty years ago the chances are that he is still on that committee, despite the intervening economic, social, and electoral upheavals; and the chances are, too, that he has considerable influence, whether of the majority or the minority party and whether or not his views correspond in general to the views of a majority of Congress or of the electorate.

The political leadership of the House does not



have a commanding influence over the appointment of committee members and it certainly cannot (or does not) remove members from their committees. At one time the appointment of the committees was the prerogative of the Speaker, but the House (and the Senate, also) now has a Committee on Committees which determines committee membership. Both Houses, to be sure, go through the formality of electing committees, but this procedure is somewhat *pro forma* inasmuch as the nominations are first made by the Committee on Committees.

The Republican Committee on Committees in the House is based frankly on geographic representation. This committee is composed of one party member from each state delegation, that member having as many votes as his state has Republican Representatives. The balance of power thus rests with the large states having the greatest representation. The House Democrats have formed a Committee on Committees out of the Democratic members of the Ways and Means Committee, and the caucus elects the Democratic members of the latter committee. The election of Democratic members to the Ways and Means Committee often occasions a spirited contest in the caucus, with rival candidates conducting small, ingratiating campaigns before the balloting. But even in these caucus elections geographic factors are often compelling. For instance, in 1939 Representative Milton West, of Texas, was elected to the Ways and Means Com-

mittee to fill the vacancy left by Morgan G. Sanders, also of Texas, who was defeated in the 1938 elections. West was apparently elected for personal reasons and because of the feeling that Texas was "due" a member on the committee, rather than because West represented the predominant attitude of the Democratic Party, which had just been re-elected on a New Deal platform. After Sanders' defeat West had toured Texas, getting the backing of other Texas Representatives, and was therefore in a preferred position in the balloting. West's voting record, however, showed him to be quite out of sympathy with New Deal legislation.

Senate leaders must also share their power with the members of the legislative committees. It cannot be said that the leaders either do or do not appoint the members of the committee, although, of course, the chairmanship of a committee is determined almost exclusively by seniority. The method of electing members to a Senate committee is not susceptible to very searching analysis, because the actual methods of appointment and the reasons for it are often so personal as to defy classification. On the Democratic side, the committee lists are ostensibly drawn up by the Steering Committee, a large caucus group now containing seventeen members. The procedure in the Senate is so personalized that one can safely say no more than that the influence of the majority and minority leaders is great, and that before appointments are made the leaders consult

with as many other Senators as they think advisable or expedient. The influence of the President often counts for something, too, but his influence cannot ordinarily be documented.

The chairmanship of an important Congressional committee is coveted because of the political power which it gives the chairman. The power of a committee chairman varies from committee to committee and from chairman to chairman, but ordinarily a strong chairman, no matter what his views, is very influential even though it may not be possible for him to prevent the reporting of all legislation of which he disapproves or to get reported all legislation of which he approves. The chairman is powerful because he can call committee meetings whenever he wishes, because he has a large amount of freedom in preparing the legislative agenda for the committee, and because he is officially consulted on questions relating to his committee. A chairmanship also offers certain prerogatives in the form of additional secretarial assistance, but, more than that, it gives the member a status with Congress, with the bureaucracy, and with the general public.

Since a committee chairmanship is important, what can be said for selecting chairmen because of seniority of service on that committee? It is difficult to make a rational defense of the seniority rule, for the method flaunts established political principles: that of party government; of a legislature responsible to the electoral mandate; and of the utilization of the

best material for the most important offices. The criterion of ability is more important than the criterion of seniority, and if a chairman has both seniority and ability, it is the result of chance rather than of design. Tenure and ability are not the same thing; indeed, seniority may often reflect the ability to stay elected rather than the ability to decide important public policy.

The seniority rule may be so ingrained in the Congressional structure that it will be impossible to remove it, although one should not be too dogmatic in one's predictions of what Congress may do. In the event that political parties acquire more meaning and are supported with more allegiance by their followers, the seniority system of Congressional committees will be one of the first casualties. The issue was precipitated in 1941 when Senator Reynolds became chairman of the Senate Committee on Military Affairs. Ordinarily Reynolds's promotion would have been automatic, but because of the administration's program of defense and aid to Great Britain, considerable opposition to Reynolds developed in the Democratic Committee on Committees.

Although one might strain oneself to find good points in the seniority system, there are worse methods for selecting chairmen of committees, and if the seniority system were abandoned, these methods might be used. A system of geographic representation, for instance, would be a possible substitute for the seniority system. Under this system a member

from the region most interested in the legislation before a committee would become its chairman. To make geography the measuring-rod in selecting committee chairmen would be to substitute for a tolerable method one definitely evil.

It is also argued that under the seniority system the rule for advancement is sure and that factional fights which would otherwise develop around personalities are wiped out. In any legislative body it is necessary to get along with one's colleagues. The seniority system lessens the friction and increases the harmony. Although there is no precise correlation between experience and ability, the latter virtue is certainly strengthened by the former; a good man with experience is better than a good man without experience. Advancement from the bottom of a committee to a more important post is something which is known and can be depended upon. The harmony created by seniority advancement has been emphasized by Robert Luce, a former Member of Congress and the author of several books on the legislative process. "Promotion by seniority [in any organization]," he says, "conduces most to contentment and least endangers morale. Exceptions must at times be made, but the rarer the better for peace and harmony. . . . Though not the only factor in deciding merit, experience is the most important factor."<sup>5</sup>

<sup>5</sup> Robert Luce: *Congress; An Explanation* (Cambridge: Harvard University Press; 1926), p. 9.

Despite the theoretical harmony which seniority is supposed to achieve, I believe there are so many objections to the system that another method of selecting the legislative leaders should be substituted. The seniority rule is sometimes carried to absurd lengths. For instance, once a member leaves Congress, by defeat or otherwise, he loses his accumulated seniority, and if again elected, he must work up to the committee chairmanship from the bottom rung. The most preposterous example of canceling seniority occurred when Senator Sherman, of Ohio, the chairman of the Finance Committee, resigned his seat in 1877 to become President Hayes's Secretary of the Treasury. When Senator Sherman reentered the Senate in 1881, he was placed last on the Finance Committee.

Seniority determines the chairmanship of a committee, but fate determines how rapidly one may be advanced on it. The membership of some committees is volatile, giving a new appointee an opportunity to rise rapidly; the membership of other committees, however, is so stable that advancement is extremely slow. To cite a few recent examples in the Senate, Senator Thomas, of Utah, became chairman of the Committee on Education and Labor after serving four years in the Senate; Senator Reynolds, of North Carolina, became chairman of the Military Affairs Committee after serving eight years. They were luckier than Senator Hayden, of Arizona, who has served fifteen years in the Senate

but is now only chairman of the Committee on Printing, which is not a major Senate committee. When Senator Neely, of West Virginia, retired from the Senate in 1941, he had served sixteen years (the last ten in succession), but he had advanced no further than the chairmanship of the Committee on Rules, which is also a relatively minor Senate Committee. The present method of advancement by seniority preserves a measure of harmony, but on the other hand it glosses over real political differences which need expression. The result, I believe, is to increase friction rather than to diminish it. The present method of selecting committee members and chairmen does not reflect the election returns in any manner except the division between the minority and majority appointees.

At certain times in the past Congress has selected committee chairmen because they represented the prevailing political trends rather than because of seniority, but this method has never developed into a standard policy. During the period preceding the Cannon revolt in the House, there was a much closer relationship between the political leaders and the committee chairmen than there is now. Even the Senate has, on occasion, revolted against the seniority rule. In 1924 the insurgent Republicans would not vote for Senator Cummins, of Iowa, to be chairman of the Committee on Interstate Commerce, and the Senate selected a Democrat instead. During President Grant's second administration Senator

Sumner was removed from the chairmanship of the Committee on Foreign Relations by the Republican caucus. After the Jacksonians were victorious in the election of 1836, Henry Clay and Daniel Webster were removed by the Senate from the chairmanships of the Foreign Relations Committee and the Finance Committee and replaced by Jackson men, James Buchanan and Silas Wright. These examples are, to be sure, exceptions to the prevailing practice, but they represent the natural reaction of Congress when the seniority system is incongruous with the prevailing political sentiment. The selection of committee chairmen by the party caucus is, I believe, a more intelligent system than the one now used. Even though the seniority system does occasionally produce the right man for the job, the caucus would, I believe, pick the right men for committee chairmen more frequently. In addition, the chairman would feel that he was definitely responsible to some group rather than being the irresponsible spokesman which he now so often is. If Congress wishes to expand its part in formulating essential governmental policy, it is quite necessary that it abolish the system of seniority. Many of the Congressional-administrative feuds would be lessened and the position of Congress in determining public policy would be increased if the legislative leaders were, in addition, real political leaders.

Legislation is frequently too important to be entrusted to the caprices of some committee chairman



who owes his position of power to the accident of seniority. Political leaders, accordingly, have developed certain stratagems to lessen the power of committee chairmen to operate independently of the general administrative program. These stratagems at times work very effectively, for with wise political leadership many of the pitfalls of power-by-seniority can be averted. The importance of the committee chairman is now often lessened by giving careful attention to the appointment of new members to committees; by selectivity in referring bills to committees; by allowing Members of Congress who are not members of the legislative committees to handle bills; and, in extreme cases, by forcibly discharging a committee from the consideration of a bill.

Given the seniority system, the simplest method of assuring that a committee will not attempt to formulate policy which is not approved by the administration in power or by the voting public is to place the best men on a committee originally. If any committee is loaded down with dead wood or obstructionists, such a committee can give the party in power little but trouble. Committee members should be chosen carefully in order to avert the embarrassment later of prying a bill from a committee or of preventing a bill from being discussed through the use of various parliamentary ruses. It is difficult, of course, not only to divine the future, but to divine the future attitude of committee members.

Congressional committees are slowly increasing

in size. I believe that one reason for this increase is to ensure the party in power of a favorable committee vote on legislation in which it is interested. The membership of the Senate has not increased very much during this century. However, in 1901 there were only eleven members on the Committee on Foreign Relations; in 1913 there were seventeen members; in 1932 there were twenty-two members; in 1942 there were twenty-three members. Other committees have likewise grown in size. In the summer of 1939 the Democratic administration attempted to repeal the Arms Embargo provision of the Neutrality Act of 1939, but there were not sufficient votes in the Senate Committee on Foreign Relations to report the bill out of the committee. Seventeen months later, when the Lease-Lend bill was under consideration, Senator Glass and Senator Byrnes, both friends of the bill, had been placed on the committee.

The position of a chairman of a committee can be minimized, given an articulate majority both on the committee and in Congress. The New Deal has been able to enact its agricultural program, even though Senator Smith, of South Carolina, was chairman of the Committee on Agriculture and Forestry and opposed many parts of the New Deal program. This success was due to the fact that the New Deal had a majority on the committee and in the Senate, which was able to outvote many of the objections which Senator Smith raised.

Another method of preventing an unfavorable committee report is to refer a bill to a more sympathetic committee. The jurisdiction of committees over bills is not always very precise, and the political leaders of Congress have some leeway in determining which committee shall consider any specific piece of legislation. Vice President John Garner once went so far as to state that he would refer any bill to the committee suggested by the bill's author, but, although few presiding officers would go this far, bills referring to the same subject are frequently referred to different committees. For example, housing legislation in the Senate has been considered by committees on Public Buildings and Grounds, Banking and Currency, and Education and Labor. Logically the Senate Committee on Manufactures rivals the Senate Committee on Interstate Commerce for jurisdiction over bills dealing with the regulation or the subsidy of industry. Actually, however, the committee is of minor importance, for it is rarely given a bill of any value. The diminution of power of this committee can be traced to the Senate Republican leadership during the Hoover administration. Senator LaFollette, at that time a nominal Republican, was chairman of the committee, and the Republican leadership thought it unwise to entrust important bills to a man whose economic leanings were not in rapport with their own.

Bills are not always referred to the correspond-

ing House or Senate committees, although the reason for this cannot always be determined. The bill creating the Tennessee Valley Authority, to cite an example, was referred in the House to the Committee on Military Affairs but in the Senate to the Committee on Agriculture and Forestry (rather than to the Committee on Military Affairs), for in the former the legislation had the solicitous support of Senator Norris.

On some occasions the leading sponsor of legislation is not the chairman of a committee, and he may not even be a member of the committee considering the legislation. The most conspicuous example of this is Senator Robert Wagner's sponsorship of the National Labor Relations Act. This bill was considered by the Committee on Education and Labor, and although Senator Wagner was not a member of the committee he attended the hearings, questioned witnesses, and sponsored the measure on the floor. This unusual procedure was not caused by the disinterestedness of the committee in the legislation, but no one on the committee was so capable of handling the legislation as was Senator Wagner. This is a splendid example of the willingness of a committee to accommodate itself to actual legislative needs.

Another example is that of Senator Harold H. Burton, a Republican from Ohio, who entered the Senate in 1941 and was placed on the District of Columbia Committee. Because of Burton's great interest in civic affairs and because of his past experi-

ence as Mayor of Cleveland, he was allowed to introduce and sponsor legislation affecting the District of Columbia even though he was serving his first year in the Senate and was a member of the minority party.

If a committee absolutely refuses to report out legislation, both Houses of Congress have methods for bringing this legislation to the floor for consideration, although, of course, these methods are seldom used because of the personal antagonisms which they arouse. In the Senate any member may move to discharge a committee from considering a bill or to call a bill from the calendar after it has been reported out. In the House the discharge rule is the classic method for reducing the hazards of irresponsible committees, but this method is at best a clumsy tool to beat the committee into line. It is a weapon more like the crowbar than the scalpel, for it operates extremely clumsily in comparison with other methods of committee control. The number of petitioners necessary to remove a bill from a committee has varied greatly during the past twenty years; the present requirement is 218 — a majority of the Members of the House — but at certain times in the past it has required only 145 votes, while at other times it has required practically unanimous consent. I have mentioned before the incident when the Rules Committee failed to grant a rule for considering the Wages and Hours Act. When the petition to grant a rule was presented to the House, Mrs.

Norton, the chairman of the Committee on Labor, emphasized how quickly such a petition had been secured. "I know that I need not remind you Members of the House," Mrs. Norton said, "of the unprecedented success with which that petition met. In two hours and 20 minutes on May 6, 218 names were affixed to the petition. Many other Members who were anxious to sign were not able to do so because the necessary signatures had been secured."<sup>6</sup>

The procedure of discharging a committee from the consideration of a bill does not play as large a part in the Senate as it does in the House. Occasionally, however, it is necessary to build a fire under a committee to force it to take some action. Much of this fire-building takes place behind the scenes, but occasionally it comes out into the open. An amusing example of the Senate reprimanding a committee occurred in 1934 when Senator Smith, the chairman of the Committee on Agriculture and Forestry, failed to have his committee report to the Senate the nomination of R. G. Tugwell as Under Secretary of Agriculture. After Majority Leader Robinson made a motion that the committee be discharged from considering the nomination, Senator Smith told the Senate why he had not presented the nomination to the committee for its consideration. He said that he wanted the Under Secretary of Agriculture to be a real dirt farmer. "I have no personal feeling toward

<sup>6</sup> Representative Mary Norton, *Congressional Record*, May 23, 1938, p. 7275.

him as a man," he said, "I do insist, however, that the Under Secretary and the Assistant Secretary and the others who are to discharge the administrative and executive functions of the Agriculture Department should be men of the soil, who understand the problems that confront the farmer, and which nobody except a practical farmer can understand."<sup>7</sup> Senator Robinson's motion to discharge the committee was never brought to a vote, but the threat was sufficient and the nomination was shortly reported and confirmed.

<sup>7</sup> Senator Ellison D. Smith, *ibid.*, June 8, 1934, p. 10817.

## CHAPTER IV

### HOW DO BILLS EVER GET PASSED?

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1. *The Life History of a Bill.* 2. *Why Strategy is Important.* 3. *How Strategy is Used*
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#### § 1. *The Life History of a Bill*

THE ROAD over which a bill must travel before it becomes law is long and winding and leads through many gates where unsympathetic legislators can stop, or at least delay, its progress. I wish to describe here briefly the legislative procedure necessary for the passage of a bill, and I will describe later some of the stratagems used to push a bill along or to stop it entirely. About ten thousand bills are dropped into the hopper every year, but of these only a small percentage become law. Most bills are already dead when they are introduced, and their sponsors know it. Why, you ask, are these cadaverous bills introduced? They are introduced for the sake of the record, so that a Congressman can emphasize his interest in some specific project. For instance, the original legislation creating the Home Owners Loan Corporation did not provide that the



bonds issued by that corporation should be guaranteed by the government, with the result that the HOLC bonds sold below par for a considerable period. Almost every Congressional district in the country was adversely affected by the depreciation of these bonds, and many Congressmen introduced legislation to remedy the condition. Only one bill was passed, to be sure, but the remaining Congressmen who introduced bills were able to tell their constituents that they were trying to do something about the subject.

You can't tell by looking at a bill whether or not it is important, whether or not it is an administration must or merely another dud. If it is really an important piece of legislation, the President will probably send a message accompanying it, and the legislation will be introduced simultaneously in both Houses by the proper committee chairmen. The bill is then referred to a committee — which committee is to some extent determined by the Speaker or the Vice President. There is a growing tendency to refer a bill to a committee because of its composition rather than because of its supposed jurisdiction; and, in truth, because many laws are so broad in scope and so complicated in detail, they could be considered by any one of several specialized legislative committees. For instance, legislation affecting price fixing was considered by the committees on Banking and Currency, but, theoretically at least, it could have as well been considered by

committees on Interstate Commerce, or on Manufactures, or on Labor, or Agriculture, or Finance.

If a bill isn't killed in committee, it may die a lingering death somewhere in the Congressional procedure. And if it finally reaches the desk of the President, it generally reflects the Congressional imprint in some manner, and may be either mutilated or improved in form. The chairman of the committee generally appoints a subcommittee to consider a bill which he thinks should be passed. Hearings are held, and witnesses from the administration and others interested are called to testify. The subcommittee then considers the bill further and makes changes where it wishes; it then reports the bill to the full committee. The full committee may accept it or add amendments or even ask for further hearings. The committee then reports the bill, and it is placed on the calendar for regular consideration. The process of getting a bill off a House calendar is very intricate indeed. Different kinds of bills are placed on various calendars and there are also special days set aside for considering these calendars. This is a phase of Congress about which the layman need not bother himself and about which the average Congressman bothers the parliamentarian for sound and official advice. It is sufficient to say that for the consideration of important bills it is necessary to secure a special rule, and a special rule must be approved by the Rules Committee and by a majority of the House. Inasmuch as neither the political leaders nor

the members of the legislative committees are members of the Rules committees, some bills are lost in this bottomless pit which separates action by the committees from action by the House.

The rule limits the time which may be spent on a bill, and in some instances it also limits the amendments which may be added to a bill by a House. The House very willingly places limits on its actions by these special rules, and wisely so, for if it were not for the willingness of the House to discipline itself, the whole legislative process would become a cacophany of voices without very much action. The minority occasionally bickers over the time allotted, even though it cannot protest effectively, and occasionally limitations of debate are secured by unanimous consent, the minority knowing that a rule can be secured at any time by a majority vote. Real dissension sometimes arises when a rule forbids the offering of amendments from the floor; this type of limitation is a real gag-rule, for it prevents the House from making any decision except saying yea or nay to the whole bill.

The Senate procedure in the committee stage of legislation is similar to that in the House, but the manner in which a bill is brought to the floor and the length of time for which a bill is considered are quite different. The Senate has only one calendar, and an important bill is generally taken off the calendar and placed before the Senate by unanimous consent. Even though the political leaders of the major-

ity or the members of the minority may oppose a bill and intend to speak and vote against it, they are generally willing to allow it to be brought to the attention of the Senate for consideration.

After the House and the Senate debate the bill and the amendments, the votes are taken; some of the votes are oral; some (in the House) by tellers; and some by record vote. The bill is then sent to a joint conference committee, where the differences between the House and the Senate versions of the bill are ironed out and a compromise is effected so that both Houses will agree on the same bill. The conferees often have considerable leeway in drafting the final version of a bill, for although the rules of each House prevent the addition of new legislation, the difference between the House and the Senate versions of a bill is often so great that a new bill sometimes results. Mrs. Mary Norton, the chairman of the House Committee on Labor, once explained to the House the extent to which the conference committee had redrafted the different Wages and Hours bills passed by the two Houses. "We met every day for twelve days and the bill was rewritten around the conference table," Mrs. Norton said. "We took into consideration every request that was brought before us and we tried to bring you a bill that we hope you can all agree upon."<sup>1</sup>

There is often little attempt made to secure the

<sup>1</sup> Representative Mary Norton, *Congressional Record*, June 14, 1938, p. 9256.

passage of identical bills in the two Houses, for differences in the bills allow the conferees to discuss the bill as a whole and to make the various parts fit together. This was the attitude taken by Senator Fletcher, of Florida, when he asked the Senate not to agree with the House on a certain section of the Securities and Exchange Act. "If we should adopt the amendment of the Senator from Colorado," said Fletcher, "we would practically agree to the House provision with reference to the Federal Trade Commission having jurisdiction over the administration of the bill, and then there would be nothing in conference on the subject."<sup>2</sup> After the agreement of both Houses to the report of the conferees, the bill goes to the President, who either signs or vetoes it.

## § 2. *Why Strategy is Important*

The procedure outlined above is only the skeleton-mechanics of how a bill becomes law. I have said nothing about the strategy necessary at every stage of the procedure, of the methods used to get the consent of the proper person or persons at the proper time. It takes a lot of thought, a lot of planning, and a lot of strategy before Congress enacts a law. One man can make up his mind fairly readily, but in a body like Congress, with a membership of more than half a thousand, the methods for reaching an agreement are many and intricate. Because it is

<sup>2</sup> Senator Duncan U. Fletcher, *ibid.*, May 9, 1934, p. 8404.

almost impossible to reach a unanimous consent agreement on any important question, legislative bodies rely almost entirely on the doctrine of majority rule — certainly one of the great contributions to the history of political action. Without this doctrine, or certain modifications of it, it would be almost impossible for legislative assemblies to operate.

When the Constitution was written, there was not much discussion of the process through which the people's aspirations should reach fruition in the form of law. Parties were shunned as factional, and it was rather naïvely assumed that a thorough discussion of the issues would result in agreement. We now know that reason alone does not govern, that one must take into account such irrational elements as prejudice, sentiment, and custom. The thinking of people on public questions is frequently ill defined and amorphous. This inchoate political thought can only be transformed into the status of law by leaders who can clarify and enunciate the wishes of the electorate and by strategists who can secure the adoption of the necessary legislation. Although in the long run the majority may rule, many methods must be available to ensure that there is a majority, and those methods must be understood by anyone who intends to acquire or to remain in power.

It is unrealistic to believe that strategy could be abolished, that political problems could be solved by every man voting as his conscience dictates, or that

the submission of political ideas in the political marketplace is base. To some, the strategy of politics is crass, and, to be sure, political strategy does at times reach low levels. The bad manners which political conflict often breeds are disgusting, for regrettably our political institutions are sometimes operated by those who are without charm in victory and who are bellicose in defeat. But although one may regret occasional bad manners, one must not be so shortsighted as to deny the importance of political strategy or to brand strategy as the trickery of politicians.

I am not interested here in the techniques for staying in power, in the methods by which the legislator remains in the favor of his constituency. This aspect of politics has been well publicized, although too often unsympathetically, and the impression is sometimes made that the legislator is interested in little more than duping his constituency into re-electing him. Whatever the politician's motives may be, his methods for staying in power have not yet reached perfection, judging by the large number of election casualties each voting season.

Political strategy is both intriguing and important. This is true whether Joe Pelegri is plotting methods to win the election in the eighth ward or some ambassador is plotting to win the adherence of a possible ally. Strategy is intriguing because it is capable of calling forth the use of man's various talents, and it is important because its wise use is nec-

essary for the completion of any legislative program. The glamour of politics is, of course, especially attractive for the actual participants, and there are few who, once enmeshed in the seductiveness of political warfare, ever lose their interest in politics.

To those who follow politics, as the term goes, political strategy presents a kaleidoscopic picture in which one sees not only the impact of personalities but also the conflict of great forces and great ideas on a gigantic scale. On a national level and especially at a presidential election the issues are fairly simple — one party against another, Mr. A against Mr. B, black against white, sin against good — and at this level politics is able to draw in as participants most of the citizens of the country. But at the Congressional level, political strategy is more involved and more sophisticated, for instead of two men pitted against each other there are many men — some pitted against one another under the broad framework of party or regional classification and some in the quest for power and prestige in the identical political group; and instead of one or a few issues, there are a multitude, each with its own advocates in the broad market-place of politics.

Political strategy is closely related to political ethics. By this I mean that in a democracy there are bounds beyond which strategy does not go. There is a considerable amount of confusion on this point. Although the black limits of political strategy are pretty well defined, there is a large twilight area



where the ethics of certain types of political strategy have not yet been determined. Machiavelli coolly describes in *The Prince* how a Borgia invited his enemies to a banquet and then had them quietly killed by his hired cut-throats. We have progressed beyond that state. A hundred years ago Daniel Webster could write to Nicholas Biddle, the president of the United States Bank and a recipient of governmental favors, asking that his retainer "be refreshed." In more recent years Huey Long could brag of buying Louisiana legislators like sacks of potatoes. But the immorality of politics is often overestimated. It rankles, of course, to learn of the buying of votes, of padded election returns, of illegal contracts, and of other crooked devices with which some politicians are familiar. The least that can be said is that crookedness, that venality, that bribery, that uncouth practices are not confined to the political arena.

Murder and bribery and corruption should be exposed and condemned. It is more difficult, however, to determine the ethics of certain mental attitudes. Which is better: sincerity wrongly directed or insincerity rightly directed? For instance, a politician with no stated political ideals will vote for whatever he believes will guarantee a successful term in office — say, for old-age pensions and for an unbalanced budget; a second may vote for the same objects, believing them in his heart to be good and in his mind to be economically rational; a third

may vote against them because he believes them to be a violation of the principles of self-reliance and of established business doctrine; a fourth may vote against them for the same reasons that the first voted for them — that is, that he believes they will guarantee success at the polls. Which politician is the most ethical?

The difficulty which a conscientious legislator often has in determining how to vote is well illustrated in the following experience related by Mr. T. V. Smith, a former Member of the Illinois State Legislature and of the House of Representatives:

“When I first ran for the legislature,” Mr. Smith says, “I declared that I would work against forms of taxation that bear most heavily on those least able to pay. Such a commitment during the election was destined to bear fruit that was personally bitter for me, and that shortly. Public relief was just coming to be the heavy burden which it has since remained. The governor of my state had been driven to a sales tax as his chief reliance for relief funds. Among the early bills upon which I as a new legislator had to vote was a proposal to continue and substantially to increase this tax on sales. . . .

“The governor, an honorable man, was not only my party leader, but was a man whom I had supported and who in turn had supported me. Indeed, he had of his own generosity enabled me to get the party nomination, when party elements in my own district would have kept, and but for him, could

have kept, me from the race. To make the personal matter as bad as possible, I must add that I was the governor's official representative in the Senate, since his home was in my district.

"His tax measure was hard pressed. He, of course, expected me to support it, as a party leader might. Indeed, he asked me to support it, as a hard-pressed man would. To make bad matters worse, it turned out that the measure lacked one vote commanding enough support to pass. The relief situation made it imperative to have funds at once, and there was no other way to get immediate funds. The sales tax *had* to pass, and only one vote was required! I thought it best to vote no. It was a tough spot, a spot in which any person in the legislature may get caught.

"I was genuinely grateful to another Senator who finally yielded where I would not: against his own personal convictions and overt promises to constituents, he furnished the required vote. That early experience has, if I needed the lesson, made me very tolerant toward representatives who sometimes yield their personal conviction as to what's ideally right, for the sake of a social situation that's pressing. It taught me the public price which others must sometimes pay for me to enjoy the luxury of living up to my own private convictions."<sup>3</sup>

<sup>3</sup> T. V. Smith: *The Legislative Way of Life* (Chicago: The University of Chicago Press; 1940), pp. 56-8.

### § 3. *How Strategy is Used*

Given the present Congressional set-up where the lines of political power are never clear, legislation cannot be enacted without an extensive use of political maneuvering. There is no master key to unlock the mysteries of Congress, to ensure any bill a safe passage through the tortuous routes of Congressional procedure; rather, the successful practitioner must carry many keys. Because political power in Congress is so stratified, because there is such a sediment of custom, of privilege, and of deference, administrative leaders can never devise any legislation which they can be sure Congress will enact unchanged — or enact at all, for that matter. Strategy must be formulated broadly for every session of Congress and in particular for every legislative stage of every bill. Anyone who expects to secure favorable legislation from Congress must have at his command the services of successful legislative strategists. The leaders do, of course, assume that Congress will have certain reactions in response to definite stimuli, but even the most sagacious leaders occasionally err — as when the House defeated the Government Reorganization Bill in 1938 despite optimistic reassurances from political experts. What Congress may do at any given time is often a mystery which can never be predicted very far in advance. One might predict short-time

trends accurately, but Congressional whims often defy both prediction and analysis.

Successful political leaders must be masters of Congressional strategy, possessing an innate knowledge of when best to discuss a bill, what Members can be depended upon to support it, what Members are doubtful or openly critical, the probable attitude of the opposition, the degree to which debate should be controlled in the House, the best Members to sponsor the bill under discussion, the House which should consider it first — the one most likely to defeat it or the one most likely to pass it, the length of hearings, the necessity for a rule in the House limiting debate and the method for persuading the Rules Committee that the bill is essential, and, most important, the assurance that there are sufficient votes.

An instance of playing one House off against the other occurred in 1935 in the consideration by Congress of the Public Utilities Holding Company Act. The administration's forces were obliged to compromise on Section 11, the so-called death-sentence clause, but adept handling prevented the clause from being eliminated. In the Senate the death-sentence clause won by a margin of but one vote. The clause was eliminated in the House bill; was again voted on and defeated, 155-209; and was finally accepted in compromise form, 219-142. The Senate voted on the clause but once, and it seems likely that it would have been willing to recede from its posi-

tion if it had been given another chance. The leaders, however, protected their Senate victory and forced the House to come part way.

Congressional strategy involves much more than a clash of issues on the floor of Congress between able proponents of their side. A large part of the strategy of Congress takes place covertly and receives little or no publicity, and although there is always debate, however small in extent, the debate may not seem to be as thorough as the subject is important. It is wise, of course, not to force compromises entirely behind the scenes. Many decisions should be and are made openly, but many are also made before any speech is delivered and before the vote is cast. The nature of political strategy accounts for the fact that much of the open procedure of Congress seems to be of an inconsequential nature. Speeches are often directed toward ends other than analyzing the implications of the legislation under consideration.

Over a period of years Congress has developed an extensive list of Members with entrenched interests in every piece of legislation introduced; moreover, the personnel of this list varies with each piece of legislation considered. In addition, the intellectual background in which Congress operates is very confused because the place and the function of political strategy in the American Congressional system have never been accurately determined, although the subject has been discussed in angry

editorials by many newspapers. Congress must be independent, yet it must not be obstinate; it must be slow in accepting innovations, yet it must not needlessly delay action on bills of great public importance; it must examine bills thoroughly, yet it must not waste valuable time quibbling. Congressional folklore is composed of odd ends of tradition, precedent, prejudice, and deference. This is the mental background of confusion in which Congress operates.

Legislation often represents a compromise between the demands of various groups for power, in whatever terms this power may be expressed. Compromise is another way of saying that a democracy cannot tolerate any group which postulates its support on the acceptance of its own position. In policy as well as in opinion we must have toleration. There is no room for any group which says whole hog or none, which says that it must define the rules or it won't play. Clearly, whatever policy is formulated by the administration in power must be accepted by the minority (subject to legislative and judicial appeals), else the government would be unable to operate. The importance of compromise in the legislative branch has been well expressed by Representative Wolcott:

"When I first came to Congress," he told the House, "I was told that all major legislation was a matter of compromise. I did not know quite what that meant until I took part in some conferences

with the Senate on legislation. I did not fully realize what it meant until the conference on this bill, when, after spending 11 ½ hours yesterday giving and taking, adding and subtracting, sparring for advantage back and forth, we finally succeeded in coming to an agreement on what I consider to be a better bill than that which the Senate passed or that which the House passed.”<sup>4</sup>

Every bill passed by Congress requires its own particular political strategy to secure its enactment. An excellent example of legislative maneuvering and compromising is the consideration by the Senate of the Hepburn rate bill in 1906, for this bill not only illustrates the unstable political and pressure-group relations in American politics but also emphasizes the importance of personal relationships in considering legislation. Representative Hepburn, of Iowa, had introduced a railroad rate legislation bill in the House of Representatives after President Theodore Roosevelt elected to make railroad rate regulation the spearhead of his program of economic reform. The Republican Senate, which at that time was under the spell of the conservative Senator Aldrich, of Rhode Island, was not sympathetic to regulating railroad rates. The rate bill was first smothered in a Senate committee but was later reported out — as a jest — under the sponsorship of a radical agrarian, Senator Tillman, of South Carolina, the well-known

<sup>4</sup> Representative Jesse P. Wolcott, *Congressional Record*, August 21, 1937, p. 9636.



Pitchfork Ben Tillman. Senator Tillman was not only a Democrat and, accordingly, a member of the opposition, but *persona non grata* with President Roosevelt, and the two were not on speaking terms. Some time earlier, Tillman and Senator McLaurin, also of South Carolina, had engaged in a fist fight on the Senate floor. This demonstration disgusted Roosevelt, who on other occasions was quite fond of fisticuffs, and the President very curtly withdrew a dinner invitation he had previously tendered to Tillman.

Senator Aldrich knew that the Democrats did not have enough votes to pass the bill, and, moreover, that Roosevelt would have nothing to do with Tillman. The forces opposed to Roosevelt and Tillman were very powerful. One of Roosevelt's biographers says that not only was the bill opposed by Aldrich and his followers but that "virtually all the most influential newspapers of the country were also opposed to it. The prevailing opinion in press and public was that the measure would never pass the Senate. The Committee to which the bill was referred and whose chairman was Senator Aldrich, acted adversely upon it, and then, as a 'good joke on the President,' turned it over to Senator Tillman . . . thereby making him its sponsor."<sup>5</sup>

President Roosevelt, however, said that he did not

<sup>5</sup> J. B. Bishop: *Theodore Roosevelt and His Times* (New York: Charles Scribner's Sons, 1920), Vol. II, p. 1.

"care a rap" who had charge of the bill, and it appeared that there would be enough votes to pass the bill if the insurgent Republicans joined with the Democrats. A curious *ad hoc* arrangement developed in order that Roosevelt might keep in close touch with legislative procedure in the Senate without actually having to talk with Tillman. Former Senator Chandler, of New Hampshire, a Republican sympathetic to railroad rate-fixing, was at that time in Washington as a member of the Spanish War Claims Commission, and he became the official intermediary between Roosevelt and Tillman. This peculiar relationship between Roosevelt, Chandler, and Tillman lasted for more than a month, and it looked as if the rate bill would be passed by the Senate without the support of the Old Guard Republicans.

At this point the Republican leaders became jittery and attempted to break up the Roosevelt-Tillman alliance; if there was to be a bill after all, give the Republicans credit for it, they thought. Senator Crane, a Republican, spent two hours with Roosevelt, painting the consequences of a split in the party and suggesting that if Roosevelt would consent to an amendment giving the Supreme Court broad grounds for judicial review of ICC decisions, the bill would be passed by a Republican majority. According to one writer, Roosevelt "accepted Crane's overtures, dropped his Democratic allies without a

hint, a word, or a warning, and on May 4 publicly endorsed a much broader court review amendment which, sponsored by Allison of Iowa, now could be passed as an orthodox Republican measure.”<sup>6</sup> The bill passed the Senate by the bi-partisan majority of 71 to 3.

Legislative leaders must decide for every bill how much time to allow for debate. They must provide enough time to discuss the legislation adequately and to give the minority a chance to express its opinion without sabotaging the program through fruitless harangue. The problem is the same in both Houses, although the methods of controlling debate differ: Senate debate lasts as long as anyone wishes to talk, although the leaders can exert considerable influence in guiding the legislation; House debate lasts as long as the leaders wish, providing they can command a majority necessary for a rule. The actual amount of time allotted in the House ranges from several days to as little as forty minutes, a minimum reached by the Emergency Banking Act of 1933. The actual amount of time spent in debate, however, or the quality of debate, is not necessarily a measure of the strategic skill used by the proponents of the legislation, for the debate itself is not often a determining factor in deciding legislation. The problem of House leaders in determining the length of debate is a relatively simple one, for all Members, whether of the

<sup>6</sup> Sam Hanna Acheson: *Joe Bailey, the Last Democrat* (New York: The Macmillan Company; 1932), pp. 199-200.

majority or of the minority, agree that limitation of debate is necessary.

The Senate leaders do not have the broad options granted to their House colleagues; they can neither secure a rule limiting the length of debate nor move the previous question. The rule of unlimited debate is paramount. There is on the books, to be sure, a closure rule which eventually stops debate after a two-thirds vote, but the rule is little more than a sleeper, for it has been used only four times in the quarter of a century of its existence. Nevertheless, although Senators have the power to talk indefinitely, Senate leaders can ordinarily determine what legislation is to be considered, providing they are backed by a Senate majority. But even with the backing of a majority, the leaders must depend on the sufferance and goodwill of other Senators, for a skillful and determined parliamentarian can keep the leaders in hot water. In 1940, for instance, the Senate was preparing to consider a bill prohibiting the advertising of alcoholic beverages by radio. Senator Clark, of Missouri, who was opposed to the bill, attempted to prevent the Senate from reaching the bill on the calendar by demanding quorum calls on four different occasions and then, seeing that he was about to lose, offered the Anti-Lynching Bill as an amendment to the radio advertising bill, knowing that such an amendment would start a filibuster. The bill was passed over. While this incident is extraordinary, the ability of willful politicians to de-

termine themselves what the Senate shall or shall not consider makes the Senate leaders cautious in considering some legislation.

The amount of time which should be consumed in the Senate in considering a bill is a nettling question. While there are no rules for limiting time, convention has provided methods which are ordinarily effective. The pragmatic test lies in the bulk of legislation passed by the Senate every session — and the free Senate can produce as much legislation as the fettered House. It is customary for debate to continue so long as anyone wishes to speak, and then for the majority leader to ask for a unanimous consent agreement to close debate and to vote at a specified time. To one unacquainted with Senatorial folklore, this method of closing debate may seem cumbersome, but, oddly enough, it is quite effective. An individual Senator, or bloc of Senators, or a minority party does not ordinarily wish to be responsible for completely stopping a legislative program by refusing to give the required consent to close debate. For when someone objects to the program, the objector can easily be identified and held publicly accountable. While the Senate passes some legislation only after debate is exhausted, it passes other legislation in a very brief time by the unanimous consent of the members. Unanimous consent allows the Senate to spend large amounts of time on what may interest it at the moment; it allows it to pass much legislation in a very small amount of time;

and it allows individual Senators to secure favors — such as agreeing to recommendations for appointments — from their colleagues.

It is exceptional rather than customary for the legislative program of the Senate to be overtly stopped by a filibuster. The filibuster in 1917 on the Armed-Ship Bill resulted in the present closure rule, and a repetition of a similar filibuster when tempers are high, nerves taut, and the national crisis great would probably result in rules allowing debate to be more adequately controlled. There are limits beyond which many Senators do not think it safe to block the majority from acting by repetitious statement of their own opinion.

It is sometimes difficult to detect a filibuster, and it is even more difficult to force a Senator to admit that he is filibustering. Senators are reticent to admit that they are filibustering because they know they have the privilege of unlimited debate only on the sufferance of the public and that if the privilege were outrageously abused a more strict closure rule would be adopted. The reticence of Senators to engage, or to admit engaging, in filibustering does not mean that filibustering is an archaic legislative weapon. Even though real filibusters are rare, the threat of a filibuster is frequently as effective and is much less conspicuous. The effect which a threatened filibuster can have over legislation is illustrated by the following colloquy which occurred when the Senate was discussing the conference report on the Food,

Drug, and Cosmetic Act of 1938. Senator Overton, questioning Senator Copeland, in charge of the bill, asked:

"May I inquire of the Senator from New York what was done with reference to the provisions of the House bill making whisky 'misbranded' if distilled from a source other than grain?"

Mr. Copeland: "I told the House conferees that some of the most able filibusterers in the Senate were so opposed to that amendment that we could not accept it, and it was stricken from the bill."

Mr. Overton: "Let me make the observation that the Senator from New York gave correct information to the House conferees."<sup>7</sup>

This discussion demonstrates that the threat of a filibuster by a few Senators can exert an inordinate amount of influence over the content of the legislation. In this instance Senator Overton and his friends had more influence over a specific section of the bill than did the specialists who had recommended the legislation, the administration, which was backing it, than the House, which had agreed to it, and the Senate, which was forced to accept the Overton deletion.

What to do? How far should individual Senators be allowed to block legislation or to bludgeon the Senate into granting favors for pressure groups?

Congress must, I believe, be able sometime to act

<sup>7</sup> Senator John H. Overton, *Congressional Record*, June 10, 1938, pp. 8737-8.

without prolonged debate, and the public must be protected from selfish but powerful groups. Should, then, the Senate enact rules to control debate more rigorously? I say yes. In the past the Senate has been exceedingly squeamish about invoking closure, for not only is the Senate proud of its tradition of unlimited debate, but unlimited debate is also a method by which individual Senators can influence particular legislation. It now takes at least a bi-partisan majority of two thirds of the Senate to limit debate and it is not easy to persuade members of the opposition that they should vote with the party of the administration. The inability of the administration's forces to secure a vote means, frankly, that the administration is on the spot, and in such circumstances to ask the minority to aid the majority in extricating itself is to put too great a strain on party reciprocity.

I know one can argue that filibusters can be good as well as bad, that not many of the major bills blocked by filibuster have been enacted when it was possible to secure a Senate vote at a later date. I think, however, there are better safety valves when inadvisable legislation is under consideration than for a few men to resort to interminable irrational talk. This device denies two premises of the democratic process: the ability of reason to persuade; and the ability of the majority to act. It is said, too, that inasmuch as filibusters rarely occur, they are really not a major legislative problem. But the actual power of a filibuster is more extensive than during the pe-



riod when it is actually in progress. A filibuster, like a guardian angel, is rarely seen, but its presence is always felt.

There is a further reason to support a more rigorous closure rule. We are not living in a world where everyone looks kindly upon legislative bodies. Congress, especially the Senate, is vulnerable from two sources. One is the desire of desperate men to have their will prevail — men who would not hesitate to stop the Senate from voting on legislation which they themselves dislike. The other is the possibility that men will be elected who do not believe in the legislative process of governing, who are sympathetic with totalitarian systems where decisions are made by an irresponsible elite, and who would discredit the Senate by stopping it from acting at all. In periods of national tension men hold tenaciously to their ideas — sometimes associating their particular position with the continuance of civilization itself. With a minority holding convictions with such intensity of feeling, the majority should be given additional weapons to protect its point of view.

It has been argued, too, that unlimited debate is necessary in order to force some responsibility on a President who, coming up for election but once in four years, is otherwise irresponsible. Several answers can be given to this argument. In the first place, an obstructionist minority does not necessarily enforce responsibility; it might, and often does, substitute no action at all for action supported by a

majority of the people. In addition, the abolishment of the short session of Congress all but nullifies the chance of a successful filibuster against money bills; Congress now has six months to enact these bills, and longer if it wishes. A more stringent closure rule would not prevent the minority from debating interminably legislation which it disapproved and even forcing many compromises from the majority.

The most important reason for controlling debate is that it would, I believe, give Congress a more important share in formulating policy, and make Congress, as well as the President, more responsible. The fact that there is no method for limiting Senatorial debate in advance often forces the President to act without first securing the consent of Congress, even though he may wish to bolster his position by a concrete expression of opinion from the legislature. Uncontrolled garrulity not only decreases the power of the Senate but increases the power of the President. The best recent example of this was the destroyer-base deal consummated by President Roosevelt in September 1940. The President thought the legality of the movement sufficiently doubtful to ask for an opinion from the Attorney General, Robert Jackson. He also secured the informal consent of legislative leaders and attempted to secure the consent of Wendell Willkie, who at that time was conducting his campaign for the presidency. But the President did not have the consent of Congress, for the rules of the Senate would not

allow a decision to be made in a determinable length of time. Congressional approval of the proposal would have bolstered the President's position immeasurably, but the proposal was not submitted to Congress because the partisanship of the campaign and the emotionalism of isolationist objectors would have kept the debate going for weeks. There have been and will be other circumstances in which the President is tempted to act by himself, to short-circuit the legislative process, even though he has ample legal power for action, unless he can ask Congress for consent and expect an answer within a definite period of time. But the President is often deterred from asking Congressional consent, not because he could not get a majority to back his position, but because of the possibility of filibuster through hearings and debates.

The question is not precisely one of legalism, for when the President acts it may not be too difficult to find legislative authority for his action. Rather, it is a question of the extent to which Congress should be brought into the process of formulating policy, and I feel it rather important that Congress be given a larger share in framing policies now shaped by the President or by the various governmental agencies. Congress is not a technical body, and the details of legislation should be left to experts; it is, however, a political body, and it is especially capable of deciding political questions. Not all of the possible political questions occur at the time legislation is passed;

they reoccur during the entire administration of an act. If Congress is to share in formulating the great decisions of the day, it must revise its rules on debate so that it can participate in these decisions.

I make no detailed suggestion for new closure rules except to say that I see no reason why a majority vote should not determine the length of debate. The rule should be flexible, of course, and, knowing the Senate's propensity for extending courtesy to all, one can be sure that it will be. For much legislation no rule of debate is necessary; for some legislation the majority should be able to stop debate if the debate gets out of hand and threatens to continue interminably; and for other legislation a time limit should be agreed upon before discussion is started. These changes would not, I am confident, fetter the Senate and transform it into a second-rate body; rather, by freeing it from the restraints of individual caprice, they would enable the Senate to participate more fully in the operation of the government.

## CHAPTER V

### THE ATMOSPHERE OF CONGRESS

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1. *Prejudices.* 2. *The Appeal to the Voter.* 3. *What Congress Represents*
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#### § 1. *Prejudices*

LIKE all institutions, Congress is a microcosmic world in itself, having its peculiar culture patterns of customs, attitudes, and traditions. The behavior of those associated with Congress is conditioned by these patterns. Congress is a bundle of prejudices, beliefs, and taboos which must be taken into consideration in understanding why it acts as it does. Congress, to be sure, reflects the prevailing attitudes of middle-class America, but its attitudes are also more specialized and revolve around the continual conflict for power within Congress and among its rivals for power in the world outside. In addition to the ordinary party conflict, there is rivalry between institutions, between ideas, and between men.

It is not easy to capture the spirit of an institution so human as that of Congress, where action must

often be explained in terms of membership, traditions, and prejudices. It is easier to describe the legal powers of Congress; or the methods by which laws are enacted; or the merits of certain public proposals; or the biographies of important members. The Constitution and the rules are silent on the folklore and folk-customs of Congress, on the social amenities which have developed to lessen the crassness of all-out political conflict, and on the attitudes of Congress toward the bureaucracy and toward the public. Yet these are the component parts of the living Congress.

The average Member of Congress has mixed attitudes toward those who administer the laws. Although the President is often adulated in Congress, he too receives his due share of abuse as is indicated in the remark Senator Ben Tillman once made to his South Carolina constituency. "Send me to Washington," he said, "and I'll tickle Cleveland's fat ribs with my pitchfork."<sup>1</sup> If a Congressman approves of the work of the administrator and is in general agreement with the policy being executed, he is likely to refer to the administrator as a specialist; if he is scornful of the administrator, he will refer to him as a bureaucrat. Congressional prejudice toward bureaucrats is revealed in the objection an Indiana Congressman, Representative Pettengill, once made to having a law administered by Mr. R. G. Tugwell. Pettengill told the House of Repre-

<sup>1</sup> Allan Nevins: *Grover Cleveland; A Study in Courage*, p. 165.

sentatives that he opposed Tugwell because he still believed "in the principles of Jefferson and Jackson, and not those of Rexford Guy Tugwell. Jefferson and Jackson won [political] campaigns and Tugwell never carried a precinct."<sup>2</sup>

That Tugwell never carried a precinct is, of course, beside the point in discussing the merits of an administrator, but the implications of Pettengill's remarks are important. Many Members of Congress believe that because they have gone through the blood-bath of a political campaign they should have a major share in formulating public policy, and they are reluctant to share this function with administrators who are appointed rather than elected. Few men have time to acquire both legislative and administrative training; it is important, however, that the legislator and the administrator understand and be sympathetic with the position of the other.

An Arkansas Congressman once expressed the opinion of many colleagues when he attacked the type of men recruited by the Civil Service Commission. He said that instead of asking questions which could be answered by businessmen, the Commission asked "psychological questions" which "ordinary people" and "old timers" could not answer. The Congressman told the House of Representatives: "We want men who know the ways of the business world, men who can save money for

<sup>2</sup> Representative Samuel B. Pettengill, *Congressional Record*, June 19, 1936, p. 10265.

the Government, instead of going out and getting a boy who has just graduated from school and can pass an examination better than the old timers. There are mighty few lawyers in this House today who could pass the bar examination in Washington, D.C., if they were to have a test. Yet we have had experience. We know the law and business methods but have forgotten definitions. . . . We now have those hifalutin' babies who have included psychological questions in the examination given our rural-route men and in the examination given our postmasters. The questions are filled up with a lot of psychological brain-trust ideas and the ordinary people of our community cannot pass the examination."<sup>3</sup>

However much Congress may distrust the bureaucrats or the President, it generally holds the courts of law in high esteem. A majority of Congressmen are lawyers and as such they have a tendency to consider public policy legalistically. There has been, to be sure, a decline in the constitutional-lawyer type of Congressman, one who measures the wisdom of all policy by his own interpretation of the Constitution. But many still look on the law and the courts as the touchstone of wisdom.

A splendid example of the deference which Congress pays to the courts was shown in the vetoed Walter-Logan bill in which Congress was overly

<sup>3</sup> Representative Claude A. Fuller, *ibid.*, August 18, 1937, pp. 9275-6.



generous in delegating to the courts prerogatives which should have belonged exclusively to the administration or to Congress. Many Congressmen believe that the administration of law is largely a legal undertaking and that consequently the administrators should be responsible to the courts for their action. That this premise may be faulty, that the ordinary legal courts may often be unfitted to decide technical questions and are the wrong body to decide political questions, is beside the point. To understand the Congressional mind it must be remembered that the majesty of the courts is more revered by Congress than by many law schools. Just as most Members of Congress would themselves like to be on a court, so too do most Members look to the courts to perform functions which should be performed by Congress.

Congress, as I said, is quick to resent any encroachments on its prerogatives or any belittling of its dignity. The grandeur and dignity of the Senate have been eloquently stated by Senator Thomas, of Utah, who on one occasion defended the Senate after it had rejected a presidential appointment. The Senate, said Senator Thomas, "has been, and will probably ever remain, a chronic irritant to most Executives. Few have been able to get along with it. None have been able to get along without it. . . . The Senate of the United States is the only creature of government which has remained continuously in existence. It has been and it will remain, therefore,

the body around which government will revolve. Presidents will continue to be made and unmade in the actions of the Senate of the United States. To attempt to coerce is fatal; to attempt to outwit is disastrous; to attempt to stand upon a right which is not based upon fact or history results only in introducing into government the confusion of an otherwise harmonious relationship especially essential to a democracy, wherein the rights of all must of necessity be recognized, even if they are only in the sphere of courtesy.”<sup>4</sup>

Senator Thomas did not originate the concept of the Senate as a giant May-pole around which all other organs of government dance. Rather, he was merely making articulate that which is implicit in the belief of most Senators. I know of no recent statement of the prerogatives of the House of Representatives to match the Thomas accolade, but one may be certain that the House, being the larger and more representative body, believes that it alone is in the direct line of descent from the constitutional Fathers and that the Senate — a definite compromise in the constitutional convention — is a latter-day impostor.

One or two recalcitrant members of the Senate could upset completely the Senate's urbane procedure and force it to become a much different body than it now is. Huey Long came as near as anyone has recently to upsetting Senate decorum, and he

<sup>4</sup> Senator Elbert D. Thomas, *ibid.*, February 9, 1939, p. 1284.

succeeded on several occasions in creating a rough-house. A few more Huey Longs for a few more years, and the slow-moving majesty of the Senate would be a thing of the past. Any Member, if he so willed, could upset Senate procedure by forcing votes, by refusing to give his consent on the many questions which require unanimity, and by insisting on the regular order as prescribed by the rules. Senators habitually defer to the wishes of other Senators on some pieces of legislation, and especially on nominations — a process known as Senatorial courtesy. Unanimous consent agreements are possible because Senators have faith in the integrity of other Senators; they have faith that no one will willingly take advantage of his position or that he will misrepresent something. For instance, the Senate may pass a bill by unanimous consent and the following day a Senator may wish to ask a question about the bill; he will ask unanimous consent that the Senate reconsider its vote, and the chances are good that his request will be complied with. The emphasis in the Senate is not on party regularity but on abiding by the rules of mutual consideration and the acceptance of established routine. The pressure to make a dissident member — usually a newcomer — conform to the comity of the Senate is strong and cold and austere and forceful.

Although there has never been friction between the House and the Senate of such major proportions as to stop the ordinary working of the government,

a feud between the two Houses is always smoldering and occasionally bursts into flame. In addition, there is often a covert rivalry between individuals and between committees jockeying for legislative preference. An instance of this was the resolution considered by the House and the Senate in 1940 relating to the non-recognition by the United States of the transfer of possessions in the Western Hemisphere from one non-American power to another non-American power. The two resolutions were identical with the exception that the House used the phrase "western hemisphere" whereas the Senate used the phrase "this hemisphere." The chairman of the two respective committees failed to come to an understanding on the terminology, and the resolution died at the end of the session of Congress. (The resolution was passed in 1941 with the Senate originating the measure but using the House terminology.)

The speeches on the floor of Congress are not always persuasive, nor are they always intended to be. Some speeches, to be sure, by their strength convert the unbelievers or even make apostates of the believers; some explain and clarify; some are little more than political or personal banter. The testimony of Congressmen is that the course of legislation is not greatly influenced by speeches. Although open debate is important in other respects, the political structure of Congress is such that the strategy of persuasion is often displaced by the strategy of ma-

neuver. The debate in the House is often dreary because the effective decisions have been made in advance of the debate. There is little attempt in either House to make the speaker remain on the subject. Even when the House is considering bills of great public importance, and time allotted is quite limited, much time is consumed on inconsequential verbiage.

An occasional visitor in the House gallery may wonder how order could come out of confusion and why an institution so apparently chaotic can exercise the influence it does. The Russian actor and dramatic coach Boris Marshalov is reported to have remarked after visiting the House of Representatives: "Congress is so strange. A man gets up to speak and says nothing. Nobody listens — and then everybody disagrees."<sup>5</sup>

The description of Congressional oratory made by Charles Dickens after visiting Washington, "the headquarters of tobacco-tinctured saliva," as he called it, is, of course, an overstatement, but it does show the impression Congressional debate sometimes makes. Dickens remarked that "The feature in oratory which appears to be the most practised and most relished is the constant repetition of the same idea or shadow of an idea in fresh words; and the inquiry out of doors is not, 'What did he say?' but 'How long did he speak?'"<sup>6</sup> Dickens also found that political debate was more animated than

<sup>5</sup> Boris Marshalov in *Reader's Digest*, March 1941, p. 21.

<sup>6</sup> Charles Dickens: *American Notes for General Circulation* (Boston: Ticknor and Fields; 1867), p. 164.

an English gentleman of the nineteenth century would care to approve. "It is the game of these men," Dickens said, speaking of American politicians, "to make the strife of politics so fierce and brutal, and so destructive of all self-respect in worthy men, that sensitive and delicate-minded persons shall be kept aloof, and they, and such as they, be left to battle out their selfish views unchecked. And thus this lowest of all scrambling fights goes on, and they who in other countries, would, from their intelligence and station, most aspire to make the laws, do here recoil the furthest from that degradation."<sup>7</sup>

There is frequently not so much generosity in Congressional debates as there might be, but neither do debates reach quite the extreme that Dickens pictures. Personality clashes flare up occasionally, especially in the House, but on reflection these remarks are generally expunged from the proceedings by unanimous consent. Congressional rules, preventing direct reference to another Member by name, are designed to prevent the outcropping of over-familiarity. In the Senate the give-and-take of debate is softened by the exaggerated mannerisms and endless compliments tossed about like toy balloons. To address an opponent as "the able Senator from —, whose views I always respect," may sound excessively formal, but it is an effective method for keeping tempers in check. To illustrate

<sup>7</sup> Ibid.

further: in a recent Senate colloquy one Senator remarked: "I am very much interested in the views of my distinguished and very able friend, for whose views and capacity I have a profound and abiding respect." Not to be outdone, the recipient of this flattery responded shortly in kind: "The Senator from North Carolina is an able lawyer, in addition to being a statesman. He is a real statesman, and I have a very high admiration for him, both personally and officially." <sup>8</sup> You don't dislike people who say they like you that much.

### § 2. *The Appeal to the Voter*

Try as they can, Congressmen are never sure what will appeal to their constituents, for voters at times seem very fickle. The votes cast in Congress are important bids for support, but few Congressmen are so daring as to depend on a voting record alone to maintain the good wishes of the voters. The game of politics is, in large measure, a game of chance. No matter how diligent a Congressman may be in cultivating the goodwill of his constituents, he cannot be certain that he will be successful; the mortality rate of Congressmen at each election is a measure of the failure of the incumbents to judge the strength of the opposition or the wishes of the voters.

It is too easy an answer to claim that most Con-

<sup>8</sup> *Congressional Record*, May 8, 1941, pp. 3751, 3753.

gressional behavior is insincere and is aimed solely at re-election. The fault is not that Congressmen make a frank appeal for the favor of their constituents; rather, it is that some appeals are crude and hollow and made at the expense of the national welfare. The following speech delivered recently by a Pennsylvania Congressman demonstrates the bombast of speeches directed too patently to a constituency. The Congressman said: "Mr. Speaker, as this is my first appearance before this honorable body, and this my maiden speech, permit me to introduce myself and to tell you briefly about the district which it is my honor and privilege to represent. . . . More than 90 percent of my constituents are native-born whites, substantial, God-fearing people, people who believe in the Ten Commandments, the Bill of Rights, and the opportunity to work and rear their families according to their abilities, and without any paternalism on the part of the Government. Their forebears came with William Penn and were doing their part in establishing our great State when it was still known as Penn's woods. Bucks County, one-half my district, was one of the three counties into which Pennsylvania was divided by Penn in 1682. . . . My home county of Lehigh, while not so old as Bucks, is not without its historic background. . . ." <sup>9</sup>

When a legislator's constituency is divided on an

<sup>9</sup> Representative Charles L. Gerlach, *ibid.*, March 14, 1939, p. 2730.



issue, the legislator may find it unwise to alienate any important voting bloc. Indeed, if a Congressman came out forcefully on every issue, he would soon find that he had no supporters left. When the Housing Act was before the Senate in 1938, Senator Henry Cabot Lodge, of Massachusetts, demonstrated that it is possible not only to straddle a fence but to be on both sides at the same time. On the last day the Senate debated the bill, Senator Lodge introduced what was known as the prevailing-wage amendment, an amendment favored by labor groups but opposed by the administration because of the difficulties involved in administering it. By not revealing his plans and waiting until the last minute to introduce the amendment, Senator Lodge caught the administration leaders off guard, and the amendment was adopted. Senator Robert F. Wagner, of New York, who was handling the bill, was indignant at Lodge's strategy. He told the Senate: "Although the Senator from Massachusetts [Mr. Lodge] sat in the subcommittee of the Committee on Banking and Currency when we had this bill under consideration, he never said a word about the advisability of including in the bill a prevailing-rate-of-wage amendment. He sat in the full committee and listened to the entire discussion, but never said a word about a prevailing-rate-of-wage amendment. At the last minute, upon the floor of the Senate, he offered the amendment without consulting any of

us who had been interested in this legislation.”<sup>10</sup>

Senator Lodge's ruse went further than embarrassing the administration by securing the support of labor for the amendment. After his amendment was accepted, Lodge won the support of his conservative constituents by voting against the bill. On the same day Senator Lodge inserted in the *Congressional Record* letters from labor leaders praising his stand on the prevailing-rate-of-wage amendment and letters from other constituents praising his stand in voting against the Housing Act.

An index to what Congressmen believe will appeal to their constituents is their official biography published in the *Congressional Directory*. Some biographies are completely blank, the Congressman apparently believing that it is in the best interests of all not to reveal past history; the biographies of others, however, are replete with facts, both relevant and immaterial. One Representative records that he has “participated in the political activities of his community as a member of the Democratic Party from the time he became of age.” He also mentions that he “is a bachelor and resides with his mother.”<sup>11</sup> A few years ago one Representative included as a member of his family “Beryl, 20 (unmarried daughter)”; two years later the name and the age remained the same, although the advertisement had

<sup>10</sup> Ibid., January 31, 1938, p. 1267.

<sup>11</sup> *Congressional Directory*, 1940, p. 76.

brought results and the marital status was changed. The reference then read: "Beryl — —, 20 (married daughter)." <sup>12</sup> One Senator in his sixties proudly records that he was president of his high-school graduating class.<sup>13</sup>

Club membership is always in order, and one Senator records that he "joined the Loyal Order of Moose in 1906" and "is also a member of the Masons (thirty-third degree), Mystic Shrine, Grotto, Odd Fellows, Knights of the Golden Eagle, Woodmen of the World, Maccabees; honorary member, Delta Sigma Phi, Veterans of Foreign Wars, and Spanish War Veterans."<sup>14</sup>

This record is surpassed, however, by a Representative who holds membership in more and fancier clubs. He records that he is "past president, Masonic Luncheon Club; member, Royal Arch Masons, Santa Monica; Santa Monica Knights Templar Commandery, No. 61; Protective Order of Elks; Fraternal Order of Eagles; member and director for 10 years, Santa Monica Senior Chamber of Commerce; member, Santa Monica Junior Chamber of Commerce; Inglewood Junior Chamber of Commerce; honorary director at large, California Real Estate Association; American Right of Way Agents Association; Los Angeles County Grand Jury (1935); Santa Monica Civic Regatta Association; Hollywood Baseball Association; Los Ange-

<sup>12</sup> Ibid., 1942, p. 12.

<sup>13</sup> Ibid., p. 95.

<sup>14</sup> Ibid., pp. 96-7.

les Breakfast Club; Uplifters' Club; Palos Verdes Golf Club; Lakeside Golf Club; Bel-Air Country Club; Jonathan Club; National Associated Veterans; honorary member, Alonzo Woodbine Post, Veterans of Foreign Wars." <sup>15</sup> One Representative records that "his four terms of two years each will give him a total of eight years of Ninth District service which is the second longest in the history of the Ninth Congressional District of Minnesota, only Halvor Steenerson, also of Crookston, serving for a longer period." <sup>16</sup>

One method of courting the voters is the practice in the House of inserting speeches in the *Congressional Record* not actually delivered on the floor. This practice is frequently criticized for its cost and for its deception, but neither criticism, I believe, is valid. The criticism of the cost of the speeches to the taxpayer does not seem valid, for the printing charges of the franked speeches are paid for by the Congressmen. The only real charge against the public treasury is the original insertion of the speech in the *Congressional Record*, and there would be this charge even if no reprints were made. Nor is the criticism of the deceptiveness of the speeches valid, for the Congressman is responsible for the contents of the speech, whether or not it is actually delivered. More important, the time of the House is saved for more important matters than speaking to the *Record*

<sup>15</sup> *Ibid.*, p. 12.

<sup>16</sup> *Ibid.*, p. 57.

for the sake of the constituents, although, to be sure, House debate does not always take advantage of this. The following speech by Representative Edwin Arthur Hall, a Republican from upper New York State, was inserted in the *Congressional Record* as an extension of remarks and was never delivered on the floor of the House. It is far better, I believe, for Representative Hall to seek appreciation for his florid oratory among his own constituents rather than in the halls of Congress.

Men and women of Binghamton, Johnson City, Endicott, and the Thirty-fourth Congressional District, the Victory Garden books are going fast. I had a large supply on hand a month ago and because of the many many requests I have received, the big pile is getting small. So if you are anxious to obtain a copy of Victory Gardens, be sure to drop me a line, telling me to send you one. Those of you who have already ordered them, along with other bulletins pertaining to agricultural information, will find them in your mail before long. If you do not hear from my office within 2 weeks after you order them, contact me again.

Along with the hosts and myriads of friendly, cooperative letters which come to my office every day from the folks back home, occasionally I open one which is anonymous and unsigned. It is ordinarily accompanied with some strong language of unprintable innuendo with which, here in America, thoughtless people, few and far between, thank goodness, are constitutionally privileged to address their elected representatives. I mention those unsigned letters not because I care what they contain, but for the reason I would ask their authors to let me know who they

are; to sign their names. That isn't asking too much, now is it? Certainly, here in free America, where we all have the right to speak our minds freely and unreservedly, no one should lack the intestinal fortitude or the stomach — to put it more bluntly — to back up what he has to say with his own signature. I leave it to you folks; now should he?

Not long ago, the War Department accepted my recommendations that educational requirements for air pilots be lowered, so that men from all walks of life and without a college education, could become air pilots. Since then, boys from the Triple Cities and other parts of the Thirty-fourth District have been streaming through Washington on their way to the great training centers of the South. In nearly every instance these boys stop off to see me in my office.

They express to me their complete satisfaction in the opportunity they have been given to get into the Air Corps. Prior to the War Department order, most of them would have been unable to become air pilots. How ridiculous it seems — I know you will agree with me — to limit fighting Hitler and the Japs to men who have a college education or a Phi Beta Kappa key. You can't lick Hitler with a Phi Beta Kappa key. I told that to the War Department several months ago. These boys who call at my office every day on their way from home to air training fields know I was right. They inform me they are glad their Congressman made that request of the Army. As the result of it, they can enter the branch of service which appeals most to them and can therefore serve Uncle Sam in their best capacity. I hope you other young Americans from home, on your way to the fighting forces of the United States, will, if you come through Washington, drop in to visit with me. I will be most pleased to see you.

Last week was a busy week for my office staff and my-

self. Although the House was in session only a short time, there was plenty of activity in other ways. Much to my pleasure, well over a hundred high-school seniors from all four counties of my district visited my office. The schools of New Berlin, Mount Upton, Chenango Bridge, Fleischmanns, Gilbertsville, and Otego came to see me. I had the opportunity to meet each one personally, to speak to each class, and to supply them with necessary passes to the Capitol, to the House and Senate Galleries, to the Supreme Court Building, as well as to the many other historical points of interest so closely guarded now that war is on.

I gave each student a copy of the American's Creed by William Tyler Page. I also presented a handsome map of the United States to each class as a token of my esteem and pleasure at their visit. Comparatively few schools have ventured to make the Washington trip this year, because they have feared congestion from war effort. Those who have come, however, have found convenience and interest with little trouble and with the passes I have supplied them witnessed no difficulty whatever in getting around.

Today I sat down and wrote a letter to each student who has called on me. It reads as follows:

Congress of the United States,

House of Representatives,

Washington, D.C., April 1942.

Dear Friend: By this time I suppose you have returned home filled with pleasant memories of your recent trip to Washington.

Once again I want to tell you how pleased I was with your visit to my office. As I said before, I have such little chance to get home during these trying days, it is a great satisfaction to have friends like yourself come to see me.

Please convey my best wishes to your parents.

If there is any way I can assist them with their problems, I hope they will feel free to call on me.

Wishing you every success in the future, I am, with kindest regards,

Your Congressman,  
Edwin A. Hall.<sup>17</sup>

Senators also frank speeches, although these speeches are usually delivered on the floor. There is no public record of the number of Members of Congress who mail out speeches or the number of speeches mailed out. One can safely say, however, that the practice of franking speeches is quite extensive, although some Congressmen use the service more than others. The franking privilege is, of course, abused when pressure groups pay for and disseminate immense numbers of speeches, but if used in good faith the franked speech offers a real opportunity for a Congressman to report to his constituents.

The public impression of what Congressmen are like has been distorted by such motion pictures as *Mr. Smith Goes to Washington*, wherein individual integrity triumphs over institutionalized dishonesty. The brave young Lochinvar who, single-handed, exposes wickedness against overwhelming odds is part of our political folklore. The perpetuation of this folklore in such pictures as *Mr. Smith Goes to Washington*, however, gives a false idea of the nature of the political process. In this picture a social misfit popular in boys' movements is, through a

<sup>17</sup> *Congressional Record* (temporary edition), April 23, 1942, p. A1649.



fluke, appointed to the United States Senate to fill a vacancy. Smith works out a plan for the government to finance a camp for the boys of his club. He becomes irritated when he discovers that the government plans to use the proposed camp ground for a dam site and power plant. Smith opposes the building of the dam, and his cause is immensely helped when he discovers that certain politicians who have bought options stand to make a profit from the sale. In a long filibuster in which he abuses the privileges of the Senate, Smith attacks the crookedness of the machine which appointed him to office.

Individuals can greatly change the nature of political institutions, but such individuals are not of the Mr. Smith type. Although at times independence in political thinking is desirable, the fact that a man is independent in thought is not of itself a virtue. Mr. Smith exhibited a certain type of political independence, but it was not the type which would improve the institutions through which the government operates. Smith was, at best, an obstructionist who had little concern with political morality when it affected his personal political aspirations.

To exalt independence as the ideal for all legislators is to misinterpret the end of politics. The independence, for instance, of a Rush Holt or a William Borah is a luxury too dear for the United States to afford in liberal quantities. A Senate full of Holts or Borahs would create an institutional monstrosity.

One of the great purposes of Congress is to act affirmatively, a feat which is extremely difficult to perform when Congressmen insist upon singing solo rather than in the chorus.

The politician is in the main a broker, as John Chamberlain calls him; he is a man who from the welter of ideas and pressures which surround him can provide a workable program that will maintain the allegiance of the citizenry. If the politician is unable to do this, if he cannot recognize ideas which are politically imperative and economically feasible, his usefulness is at an end.

Men act differently at different times; sometimes a legislator will be the mediator between conflicting groups, while at other times he will represent a cause on which he will not compromise. He does not take an uncompromising attitude on all questions, but only on those with which he is especially enamoured. To cite a few examples: Senator Pittman was ordinarily a loyal and a useful party man. His vote could generally be relied upon by the Democrats, and he was helpful in negotiating compromises between conflicting groups. But upon the subject of silver and other items affecting Western mining he became a pleader for special interests; he was then no longer a party man, but a man with whom other legislators had to mediate. He was in the position of demanding concessions, not of offering them. Senator Ashurst was as valuable a political broker as was Senator Pittman. On the question of

copper, however, Senator Ashurst ceased being a broker and became a champion of a cause.

Some Congressmen would rather be able to criticize the use of power than to exercise power themselves. The action of Congress is often tempered either by the minority or by the fact that the majority may some day be the minority. This characteristic is reflected in the political proportions on the committees, which give the minority a representation proportionate to their numerical strength; it is reflected in the debates and in the hearings, when the minority is often allowed as much time as the majority, or more; and it is reflected in the actions of various Congressmen, such as Senator Harrison and Senator Robinson, who were keen critics as members of the minority but who did not relish to the same degree their position as leaders when their party came into power.

The task of being a politician is not an easy one. This profession calls for knowledge of facts and skill in execution; for ability to act decisively or indifferently, and for a willingness to assume responsibility for action. Within the ordinary sphere of party loyalty, the American Congressman can use his personal judgment to a considerable degree.

The weaknesses in human behavior are sometimes outlined all too clearly in our politicians. The weakness frequently attributed to politicians, that of avarice, is not common in Congress. Many are ambi-

tious, but few are venal. The average Congressman does not want money but power, and he frequently makes personal sacrifices to maintain his position. The aphorism that the reward for being the general is not having a larger tent but having command is too little understood; the interpretation of political action in terms of personal economic motivation goes but a little way in explaining why Congressmen act as they do.

### § 3. *What Congress Represents*

From what economic groups do the Members of Congress come; what occupations do they follow; what specific interests do they represent? It can be said, in brief, that Congress is definitely middle-class. The middle class, however, is by no means united in its attitude on public questions, and but a few segments of the middle class are represented in Congress. The majority of Congressmen belong to a specific segment of the middle class: that of the legal profession. The magazine *Fortune* found in 1941 that there were "230 lawyers among the 433 members of the House; 50 businessmen, 23 farmers, 17 educators, 14 politicians, 11 bankers, 11 newspapermen, 12 publishers, 5 doctors, 2 housewives, 3 engineers, 2 dentists, 3 laborers, a veterinarian, an American foreign-service man, a pharmacist, a bricklayer, an architect, and a nurse. Among the 96 Senators there are 60 lawyers, 7 publishers, 8 bus-

iness men, 5 politicians, 8 farmers, 3 newspapermen, 2 educators, 1 housewife and 1 banker.”<sup>18</sup>

In another study, made in 1933, Professor Arthur Holcombe found that the wage-earner “makes almost a negligible showing in the Congress. No industrial or agricultural laborer found his way into the Senate . . . and only seven persons claiming to belong to this class reported their presence in the House of Representatives. Most of these were paid officers of trade unions or labor organizations of some sort, that is, semi-professional organizers whose occupation, if not antecedents, tended to give them a professional rather than strictly proletarian point of view. . . . The capitalist and intermediate classes, on the other hand, are greatly over-represented. The capitalists were ten times as numerous . . . as in the country at large, and persons belonging to the intermediate class were nearly seven times as numerous.”<sup>19</sup>

But members of Congress represent more than the economic class from which they happen to come or which supplies (or supplied) them with an income. They also represent sections; indeed, sectionalism is a unique characteristic of American politics, and it was the failure of the politicians of an earlier age to find a program which would transcend sectional interests that led to the Civil War. It has been suggested that sectional politics are being superseded

<sup>18</sup> *Fortune*, April 1941.

<sup>19</sup> A. N. Holcombe: *Government in a Planned Democracy* (New York: W. W. Norton & Company; 1933), pp. 48-9.

by class, or urban, politics as the increased industrialization of the country multiplies the number of wage-earners and as the owners of production find a common interest which transcends sectional lines. Sectionalism, however, is still an important concomitant of American politics and must be given a major consideration in all political planning. The influence of sections can be seen in many of the roll-call votes in Congress, a factor which makes successful party leadership extremely difficult.

An excellent example of the influence of sectionalism is the Senate vote on the conference report of the Farm Bankruptcy Act of 1934. It was contended by the opponents that the passage of the bill would have an adverse effect on the investments of insurance companies. The vote showed the financial East opposed by the West and the South. Sectional lines were substituted for party lines. No votes were cast for the conference report from Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, or Ohio. One Senator from Missouri voted for the report and one against it.

Sectionalism is reflected not only in votes on legislation but in the personalities of various Members of Congress. The Congressional membership may not be a true cross-section of American economic life, but it does present a colorful mosaic of American regionalism. The combination of nickel magazines and hand-me-down suits has not yet produced

a uniform American culture. Congress has its prudent Yankee Republicans, of course; it also has Yankee Democrats stemming from that long, thin line of New Englanders who kept the Democratic Party alive in New England through the troublesome days of the Civil War and the Reconstruction; it has representatives of the newer races who are just beginning to feel the surge of their potential strength; it has representatives from the political machines of the great cities; it has aristocrats from the Old South; it has representatives from the South of the small entrepreneur and the rising industrialist; it has representatives from the South of the dispossessed — the sharecropper, the debtor, the old folks, the unemployed; it has representatives from Southern Republican mountaineers whose ancestors followed Andrew Johnson in supporting the Union cause; it has representatives from the agrarian West, suspicious of both capital and labor; it has representatives from California supporting various causes — fabulous funny-money schemes, crusades, pension plans, faith cures, and the thwarted, aged, penurious, uprooted old folks, worried about the future.

The social turmoil of some regions prevents their representatives from advocating any cause which will not serve their immediate political interests. Deep-seated social conflicts, where racial, religious, economic, and personal schisms are always out in the open do not provide a favorable milieu for making far-sighted legislators. A representative from

such a district is continually walking on egg-shells; he cannot well take a stand which will offend any group.

There are some who believe that proper representation is the key to our legislative problems. The argument goes that if the people are properly represented, Congress will pass the type of laws the people want, and everyone will be happy. We have experimented considerably with different types of representation — although not so much as certain European countries have in the past — but obviously the problem is not yet settled. To make a broad statement, there are two types of representation now in use, general and specific. By general, I mean geographic representation; by specific, I mean occupational representation where specific groups are represented — such as labor, the employer, and the public in such agencies as the War Labor Board. The present system of political representation is infinitely more complicated than that in the eighteenth century when the Founding Fathers wrote the Constitution. At that time political representation was a fairly simple concept, and in many areas the legislator was really the representative of his constituency. In those days the methods of transportation and of communication were not highly developed, and the electorate was not well informed on the various political issues. The voters chose a man to represent them, and they trusted his judgment.



Various experiments have been tried to make political representation a more vital factor in the public life. Proportional representation is one of these devices, and although it has been found to work satisfactorily in some municipal governments, its value on a national scale is questionable. Under the theory of proportional representation, votes are not counted on a purely geographical basis, and the voters are allowed a broader discretion in selecting candidates who they believe will support their point of view. The result is to minimize the importance of geographical representation and to increase the importance of occupational or other group representation. The so-called Ludlow referendum, calling for a popular vote before a declaration of war, is another attempt to supplement the representative process, or, to phrase it better, to substitute direct participation of the voter in certain instances.

I do not believe that very much can be accomplished by tinkering with the method of representation we now use for electing Members of Congress. One can, of course, point out certain inequities in our present system, such as the fact that both New York and Nevada are entitled to two Senators. One can also point out the rigidities in our method of election and suggest that the term of the Members of the House be increased to four years, that the term of the Members of the Senate be decreased, or that the President be elected for a single six-year term, but the results of such tinker-

ing seem to me to be so speculative and the changes so difficult to achieve that I do not see any substantial reforms developing from this line of action. One may expect in the future that there will be a broader basis of representation when certain groups gain access to the ballot, but this change could occur without disturbing the present method of representation.

The world of machines has lessened the importance of purely geographic representation, and it has been necessary for the modern mind to find new methods whereby the various demands of the people can be expressed. We have had to supplement geographical representation with representation more adequately expressing occupational and other economic interests. This calls for representation of a technical nature. No citizen is now represented completely by the Representative from his district, the Senator from his state, or the President from the nation. In many governmental agencies the consumer is given special representation, and in other agencies government specialists represent what is known as the public interest. If the voter is a member of certain economic groups — that of railroad operators, for instance — he is represented in political institutions other than Congress, such as the Interstate Commerce Commission or the National Mediation Board. The technical demands of our economy have forced Congress to share its representative function with other agencies. Congress still represents the major political interests of the

economy, based on a geographic basis, but it shares its function of representing technical and occupational interests. Representation in agencies outside of Congress is often of major interest to the parties concerned, and while these parties may not know or care what is happening in Congress, they are tremendously concerned with the representation in the agency affecting them. A railroad executive, for instance, may know every member of the Interstate Commerce Commission and be able to cite offhand many of the Commission's important decisions, and yet not tell you the name of the Representative of the Congressional district in which he lives.

The Department of Agriculture has been one of the most enterprising of the agencies in experimenting with new methods of political representation. For instance, it has provided for direct farmer participation in the crop-production control program, instituting referendums by which the farmers may indicate whether they wish to participate in such a program. It has also provided for study groups, demonstrations, and other methods of allowing individuals and groups to have a larger share in formulating and executing the agricultural program. Mr. M. L. Wilson, the present Director of Extension in the Department of Agriculture, has postulated a two-way line of power: that going from the department down and that coming from the farmer up, so that administration becomes a co-operative enterprise rather than one of bureaucratic dictation.

We have not yet solved the complicated problem of political representation. It is the task for our government to provide methods for adjudicating disputes between various economic interests in order that internal frictions will not tear the country apart and in order that highly organized power groups will not exercise an inordinate amount of influence.

Political representation for particular interests, however, should not obfuscate the need for a policy broader than that afforded by specialized representation. Our government needs specialists and special representatives, but it also needs men of broad vision and understanding who can see the entire picture and see it clearly, who can co-ordinate the various activities of the government, and who can plan the direction in which our public policy should go.

## CHAPTER VI

### HOW DOES CONGRESS KNOW WHAT'S HAPPENING?

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1. *Why Should Congress Bother?* 2. *The Law May Not Mean What It Says.* 3. *Congress Knows about Some Things That Happen.* 4. *Congress Doesn't Know about Everything That Happens*
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#### § 1. *Why Should Congress Bother?*

THE JOB of Congress is not completed when it passes laws; it must further see that these laws are executed wisely. With the growth of big government and the extension of delegated power, Congress becomes less a law-making body and more a controlling body. During war emergency especially, when much policy is formulated as a result of broad emergency grants, the function of control is increasingly important. Although many political problems can be solved only by specialists, it is necessary that Congress give consent and direction to the major governmental policies, and that it provide methods for ensuring the faithful execution of

laws. It is quibbling to say that administering the laws is the President's business and his alone; that once a law is passed, there is nothing further for Congress to do. The Congressional stake in how laws are executed is very real and is reflected in the amount of money which Congress must raise and appropriate, in the new legislation which must be passed, in elections where Members of Congress are held responsible for maladministration, and above all in the stake and the interest which all have in able administration.

The purpose of Congressional control is to ensure that the government will adequately perform the services demanded by the people. It should make certain that the principles implicit in democracy reach fruition in overt action. The purpose of control is not to heckle the President or to embarrass the departments. At one historic time, to be sure, the legislatures developed by checking the prerogatives of the king, and in the end the legislatures succeeded not only in preventing the extension of the king's prerogatives but in obtaining control over the instruments of government. In this country the office of the Chief Executive has been greatly democratized, and the President is chosen with the consent of the electorate. Congress is no longer fulfilling the historic function of legislatures when it needlessly fights with the President or tries to shear him of his powers or attempts to embarrass his administration. The President, like Congress, has been

democratized, and Congress only muddies the waters when it looks upon the President as another tyrant like James I whom it should destroy.

The problem of control is complicated, and Congress has not yet found a satisfactory solution, although the techniques for controlling administrative action are certainly less harsh than they once were. At one time a public minister who fell from grace was banished or perhaps his head was severed. Our methods are more tender. Here a fallen angel can become a newspaper columnist or write a series of exposés for the *Saturday Evening Post*. One archaic method for controlling the bureaucracy is provided in the Constitution: that of impeachment; but the procedure is long and involved, the penalty is often severe, and the offenses necessary to bring impeachment charges exceedingly grave. Impeachment cannot be relied on as a regular method for controlling the bureaucracy; it is easier to force a man out of office by a smear campaign.

There are limits under which Congressional control operates, for Congressional criticism does not lead to the criticizer and his party assuming the responsibility for administering the government. For this reason Congressional criticism is often irresponsible and carping and some of it should not be taken too seriously. It is an axiom of government that they who exercise power must be responsible for its use — that is, that power must be controlled and must not be arbitrary — and in the classic theory of rep-

representative democracy this responsibility is achieved by periodic elections of representatives. Elections, however, do not exhaust all methods of control utilized in a modern democratic state.

The American voter relies chiefly on the ballot to enforce responsibility in the government, but at the very best the voter can only select a representative most in sympathy with a trend of policy which the voter favors. To rely solely on the voter to correct the misdeeds and shortcomings of government is to misjudge the nature of our political institutions. In ensuring responsibility in government, the position of the electorate is important, but the electorate can do little more than establish the general trend for the administration to follow. For the specific operation of policy the electorate must rely on administrative and Congressional controls, bolstered by appeals to the courts, to public opinion, and to the right of self-help.

There is more to the government than Congress, and more means of enforcing responsibility than the ballot. The derelictions of administrators are accounted for by many devices. There is, to be sure, a relationship between control of the Congressmen and control of the bureaucracy by the voter, but the control is not always direct. The individual legislator, and often even a majority of the legislators, cannot easily alter administrative action of which they may disapprove. Voters may become incensed at some policy and wire their Congressmen propos-



ing reforms. In some instances wires may be effective, but political policy is ordinarily formulated by groups whose position is institutionalized and who are not necessarily deterred in their course by political-consumer reaction. Political institutions are so much a matter of growth that they cannot be readily changed no matter how incensed an electorate may be at their operation. This explains why reform governments (especially in municipalities) are so often short-lived — the reformists come into power with a splash and a flourish, but unless the effected reforms are institutionalized they will not last long, and unless the reform party becomes a real political power which is able to govern continuously it will wither like the rose.

Review of administrative acts by the courts of law is one ancient Anglo-Saxon method for controlling administration, but in modern times this control needs to be supplemented by other procedural devices. The average Congressman has faith in the courts and for the most part is content to let the courts bring administrators to task. The courts can't do it all, however, and if they are given too wide a latitude of discretion they may hamper effective administration. The work of the courts in ensuring that due process of law be followed must be supplemented by political controls on administration. The possibilities of individual protection against bureaucratic negligence or indiscretions have not yet been tapped.

On the administrative side, controls are being developed under the ægis of the Executive Office of the President, which includes among other agencies the Bureau of the Budget and the administrative assistants to the President. It is hoped that, when fully developed, the executive agencies will provide a centralized control which has heretofore been lacking. The haphazard arrangement of some departments and agencies and the spotty methods of formulating administrative policy will, it is presumed, be transformed into a more regularized pattern. But on the Congressional level much still remains to be done.

Ordinarily administrative units can operate effectively under their own momentum; given wise leadership and efficient personnel, these units can operate without much direction or control from the outside. Congress delegates power to a specific institution for specific functions — such as, for instance, to the Department of Agriculture — and then lets this institution develop an *esprit de corps*, a purpose, and a discipline of its own. Congress gives a grant of power to a department much as the British Crown gave charters to the Hudson's Bay Company or to the East India Company. Congress must, of course, finance these departments annually, but by and large successful departmental operation depends not so much on Congressional supervision as on the ability of a wise personnel to develop and utilize institutional techniques of management.

Within each organization procedures are developed to ensure the faithful execution of work. The function of Congress is not to determine the details of policy, to reach into bureaus and reorganize personnel problems; rather, it is to see that these agencies operate as responsible institutions; that they do not overlap in function; and that there is co-ordination in the over-all operation of the government.

The Department of Agriculture, for example, will remain as the agency for a special interest. Congress can leave the internal arrangement of this department to responsible administrators. Congress' job is to see that the department is well run, and that the policy of the department is co-ordinated with the policy of other governmental agencies. The nation needs some institution which can see the whole picture and see it clearly, and that agency is Congress.

### *§ 2. The Law May Not Mean What It Says*

Congressional control means that at some point in the development of a policy Congress is able to make its criticism effective. One can determine policy before law is enacted by writing in restrictions and specifications or one can determine policy after law is enacted. The first method, that of predetermining policy in legislation, is the classic method by which Congress controls public policy. Underlying this method is the assumption that law is specific

and mandatory and that in executing law the administrators are merely following out the will of Congress. I do not believe that formulating policy by legal restrictions is as effective as other means, for the law itself can be expanded by usage and interpretation, and in laws where broad power is delegated to the administrative branch Congress is frozen out from further determining policy. It is vitally necessary, of course, that power be delegated to the President and the departments, but if Congress is to control the administration of government adequately it must develop superior methods for controlling policy after laws are enacted. Writing legislation in detail does not provide for the flexibility modern administration needs, and it does not provide Congress with the control over policy which it should have.

The term "delegation of power" often strikes an ominous note, for it implies that Congress has subtracted from its total quantity of power and given this power to the President. This mechanistic concept, which delineates power as one might delineate, say, a load of gravel, presupposes that as the President gains power Congress loses it, and in the same ratio. It presupposes, too, that the President is given power which formerly belonged to and was exercised by Congress. This supposition may be true in some cases, such as in the Reciprocal Trade Agreements Act, where the function of fixing tariff rates was transferred from the Congress to the President,

but in other cases, such as the regulation of securities, Congress not only did not perform this function but, given its organization, could not easily do so. With proper controls, the delegation of power to the President need not mean that Congress grows weaker as the President grows stronger.

The term "delegation" does not accurately describe what actually happens when Congress passes a bill increasing the authority of the President. The theory of the separation of powers has given rise to the dogma that legislating is the province of the legislature and that administering is the province of the administrative. As Chief Justice Marshall said, "It will not be contended that Congress can delegate . . . powers which are strictly or exclusively legislative." But in the next sentence of this opinion, the Justice showed that all power pertaining to the legislature is not essentially power which only the legislature can exercise. He added: "But Congress may certainly delegate to others powers which the legislature may rightfully exercise itself."<sup>1</sup>

The distinction between legislative powers which can only be exercised legislatively and legislative powers which can be delegated forms an interesting part of the body of constitutional law but cannot be expounded here. In other words, granting constitutionality, the administration as well as the legislature can make law; that is, it can make rules for conduct which are enforceable. The legislative process,

<sup>1</sup> *Wayman v. Southard* (1825), 10 Wheaton 42.

the process of formulating policy, neither begins nor ends with Congress. Many decisions must be made both before and after Congress enacts a law.

The rules for delegating power are not well formulated. At times Congress is as prudent as a maiden aunt in defining the scope of administrative discretion, while at other times it is as reckless as a wastrel son. Some authority is granted in broad, sweeping terms which have few limitations; other authority is granted in details so minute as to encumber successful administration. Legislation on the statute books has been enacted over such a long period of time and under such a divergence of conditions that there is little uniformity in the method of authorizing power.

In delegating power, Congress must answer four questions: who is to exercise this power; what, precisely, is the grant of power; when shall the power be operative; and how shall its use be scrutinized? The responsibility for administering a policy may be given to the President alone, to a department head, to a bureau chief, or to some combination of the three. The tendency in much latter-day legislation has been to make the President primarily responsible and to allow him to delegate his power to whatever authorities he thinks best; this is in line with the theory of executive responsibility in administration. The antithesis of this type of delegation is authorizing the bureau chiefs to originate, or to countersign, administrative legislation. This type

of administrative decentralization often leads to bureaucratic stagnation where a bureau chief can stop the effective action of Congress, the President, or the department head.

The standard set by Congress for administrative action must often be vague, for the situation about which Congress is legislating may be so general that no specific standard is possible. Administrators, for example, are directed to execute a certain policy "if it is in the public interest." Frequently when Congress attempts to go further and specify in detail the policy to be followed, it gets tangled up in its own circumlocution. For instance, in 1924 Congress passed the Hoch-Smith resolution directing the Interstate Commerce Commission to make a study of freight rates. Congress wished the study to be comprehensive, and it accordingly directed that "The commission shall give due regard, among other factors, to the general and comparative levels in market value of the various classes and kind of commodities as indicated over a reasonable period of years, to a natural and proper development of the country as a whole, and to the maintenance of an adequate system of transportation."<sup>2</sup> Congress wished to give specific directions, but as it developed, the directions were necessarily vague and the Commission was granted broad discretion. The Commission could use its own judgment about the meaning of "due regard," "reasonable period of years," "nat-

<sup>2</sup> *Congressional Record*, June 7, 1924, p. 11245.

ural and proper development of the country," and "an adequate system of transportation." If the Commission were interested in developing "an adequate system of transportation" of air freight or water freight, the conclusions would be different from those, say, in developing motor freight.

§ 3. *Congress Knows about Some Things That Happen*

Congress is not so docile as to rely on legislative limitations to determine public policy, and it is too impatient to wait until the departments submit an annual report to learn what is happening. Congress has developed several fairly satisfactory methods for learning of political developments and for influencing policy, and it could supplement these methods with certain others which I will mention later. Spot control of administration is one of the most frequently utilized methods by which Congress supervises the bureaucracy. This control operates on a catch-as-catch-can basis and is extremely opportunistic. If you see a head, hit it. Congress seizes on various incidents which arise from time to time and demands an accounting. While this method of control is at times very effective, it prevents Congress from getting a broader, more complete view of the government and it places a premium on the cautious, timid administrator who does not arouse the curiosity of an unsympathetic group



in Congress. Spot control takes the form of Congressional hearings, Congressional debate, letters to departments, requests for special information, or inquiry by the press.

One of the most effective methods of spot control is the Congressional hearing. Congressional hearings, which help fill the broad chasm between the administrative and the legislative branches, have grown in number and in importance during the past twenty-five years. During any legislative day, several hearings are in progress, and during a session of Congress several hundred administrators appear before Congressional committees. For the most part, administrators appear at the hearings to advocate and to explain pending legislation, but in addition they inform Congress on the operation of the departments and they learn Congressional reaction to the policy they are carrying out. Some committees have informal conferences with administrators from time to time on public policy although no specific legislation is under consideration.

It is difficult to assess the value of Congressional debate in controlling the administration. There is always an element of futility in Congressional criticism, for no matter how pointed an attack or how true a charge, the administrator is never present on the floor to answer the charges. The talk is in a vacuum. The criticism may be answered by some Congressional leader, but there is no joining of issues between the Member of Congress who makes

the charges and the administrator responsible for the action. This leads to some irresponsible criticism, and to charges which may be untrue but which cannot be effectively denied. In the House of Representatives a number of one-minute speeches are usually made at the beginning of a daily session. These speeches allow the Members to unburden themselves on the state of the Union and so indicate the trend of opinion in the House.

A more direct method of Congressional criticism is the custom of a Member of Congress writing to an administrative head for specific information on the conduct of policy and having the answer placed in the *Congressional Record*. This type of indirect cross-examination is superior to rambling Congressional criticism where the facts are but partially known and the administrator's attitude is unrevealed.

A large bulk of the work performed in Congressional offices is liaison duty between constituents and the government agencies. If a constituent feels that he has been treated unfairly, if he believes that the administration of a law has been lax, if he has any type of criticism to make of the government, he frequently writes to his Congressman and the correspondence is referred to the proper agency for comment.

The following letter from a farmer to his Congressman illustrates one type of complaint registered by the voter. "I regret very much to bother

you now," the farmer wrote, "but I need your help. I think there needs to be an investigation of this office at —. They have a bunch of high school graduates that don't realize no more what it takes to make an acre lot than if there wasn't such a thing. We can go in there to ask about anything they will get so mad and curse around about it. Then there is some like us who haven't received their parity checks and some have done got their conservation checks. I will appreciate it very much if you can do something about it. Thanking you, I am your friend."

Writing letters to a Congressman provides a means for the constituent to present his grievances to the powers in Washington; it informs Congressmen of the manner in which laws are being executed; and it reveals to the agencies possible shortcomings in their administration. This type of control is probably not so effective as courts of administrative appeal might be, but it does force the agencies to explain specific charges.

The press is another instrument useful in controlling the administration; the press, to be sure, is extra-governmental, but statements in the press often serve as a text for further Congressional elaboration. The gap created by the division of powers between the legislative and the executive is further filled by press conferences where reporters can ask direct questions on the administration of policy. In some respects information gathered at press conferences

is more revealing than at Congressional hearings, for the reporters have access not only to department heads but also to the White House. The President's press conferences serve many of the functions performed in other countries by appearance of the Prime Minister or Premier on the floor of the legislature to state the government's policy and to be questioned concerning it. It is one of the anomalies of our system that while Congressmen cannot publicly interrogate the President regarding policy, news reporters can. If a Congressman does not like what is happening, he can do little more than grumble out his grievance before an unsympathetic chamber; but if he is an accredited White House correspondent, he can ask the President directly why things are as they are.

The press forces Congress to be a critic by soliciting comments from Members on any subject. For instance, if a department makes a regulation concerning grazing cattle on public lands, or the production of oil, or the mediation of labor disputes, the press may attempt to secure the reaction of interested Congressmen. A Congressman's response to a question from a reporter may receive far wider publicity than a speech on the floor of Congress. The press is thus able not only to inspire Congressional criticism but to direct that criticism toward specific objects. The questions that are asked are just as important as the manner in which they are answered.

It is customary for governmental agencies to submit an annual report to Congress describing in some detail past accomplishments and future plans; some agencies, such as the Reconstruction Finance Corporation and the Lease-Lend Administration, must by law report more frequently. The annual reports are valuable for historical purposes, but they are not of much worth as an aid in Congressional control over administration. With a few exceptions, the agencies have not used much imagination in the composition or the layout of their annual reports, and there are not many in Congress who pay much attention to them. However, the fact that reports are required serves as a minor check on departmental activity, and they are read by scholars and specialists. More satisfactory are the special studies made at the specific request of one or another branch of Congress.

The most spectacular form of Congressional control is, of course, the investigating committee. If wisely used, there are few superior methods for getting at the root of a bad situation or for clearing the atmosphere of false charges. Because Congress is not a part of the bureaucratic hierarchy, it is able to probe into matters which the administration may be reticent to touch. If unwisely used, however, investigating committees may blackwash individuals unfairly.

It is considered easier to instigate an investigation in the Senate than in the House of Representa-

tives. The House is generally under more rigorous party control, and the leaders are not likely to permit a resolution to be adopted which might embarrass the administration. In the Senate the party control is not so strong; however, the Committee on Audit and Control has jurisdiction over the amount of money spent, and it has in the past limited investigations by controlling the supply of funds. It is possible for a subcommittee of the Senate to hold investigations without further authorization by a full committee or by the Senate, as was demonstrated by the Movie Investigation conducted by an Interstate Commerce subcommittee. This investigation was carried on ostensibly to determine whether an investigation should take place. Supposedly, however, the power of a subcommittee to carry on an investigation without further authority from Congress is limited to asking witnesses to appear voluntarily without their expenses being paid. Congressional investigations have been and can be useful instrumentalities for control, but their effectiveness can be lost by a propensity which Congress sometimes shows to investigate everything, and by allowing a feeling to develop that a witness does not get a square deal when he appears before a committee.

The control exercised by Congress over personnel goes much further than the Senate's constitutional power to advise and consent to the appointment of major political office-holders; but once a

man is hired, Congress has little control over his actions or his tenure of office. Congress can remove government employees by denying funds, but this method is not used frequently. The power of the Senate over confirmations is, of course, very great, and although there are occasional misuses of this prerogative by the Senate, it does provide a tie between Congress and the administration. Representatives (that is, the members of the majority) are generally allowed to select postmasters, and in addition can frequently suggest names to agencies not covered by Civil Service regulations.

In general, the Senate is interested in appointments to the big jobs; the House is interested in appointments to the little jobs. An interesting dispute arose between the House and the Senate when legislation to create the United States Housing Authority provided that there should be no Civil Service requirements, thus giving the Members of the House the largest possible scope in suggesting personnel to be hired. The Senate provided that the Civil Service rules should apply to all employees earning less than \$4,000 per year, but that Senate confirmation would be required for all employees making this amount or more. This would have broadened the Senate's customary power over confirmations and deprived the House of any opportunity of suggesting personnel. The conference compromised by placing all those earning \$1,980 or less under Civil Service regulations, and requiring

Senate confirmation of those earning \$7,500 or more.

*§ 4. Congress Doesn't Know about Everything  
That Happens*

The methods which I have discussed for controlling the administration are effective in varying degrees. They do not do the job thoroughly, however, because they do not provide a systematic method for controlling all major policy; they do not provide a method for Congress to give its further consent to certain policy; and they do not ensure that the departments are well operated. I believe that Congressional controls would be improved if Congress could participate further in the councils where policy is formed, through some device such as a Legislative Cabinet; and if it would discuss and vote on questions of policy after legislation is enacted. Congressional methods for advising the President have not yet been institutionalized although numerous experimental attempts have been made. Congressional advice now given to the President is occasional rather than constant, and varies with the nature of the subject and the political leaders with whom the President must confer.

From time to time certain plans are proposed to increase Congressional control over policy, but most of these plans are forays on the President's prerogatives rather than thoughtful attempts to im-



prove the techniques for formulating policy. Marginal proposals are continually being presented: Senator Davis has suggested that the Bureau of the Budget be placed directly under the control of Congress; Senator LaFollette has proposed that war referenda be taken when proposed by a panel of five, including the Vice President and the Speaker of the House; during the depression it was proposed that Congress protect its interest in relief by granting to the Speaker a share in the appointing power. These sample proposals demonstrate the sporadic nature of the plans to give Congress a greater share in administering policy and are indications of the underlying frustration of Congress. If Congress passed such schemes, it would cripple the power of the government and divide authority at the point where authority should be undivided. The creation of the Joint Committee of Fifteen on Reconstruction, organized after the Civil War to guarantee that Congressional and not presidential plans prevailed in dealing with the South, is not a precedent worth following. This Civil War attempt to short-circuit presidential control reached its logical culmination in 1868 in the impeachment trial of President Andrew Johnson. The failure of the Senate to convict Johnson stopped a trend which would have established the supremacy of government by Congressional committees.

A method is needed whereby the President can be given the benefit of Congressional advice. If a

plan goes further than this and whittles down the President's power, it will create confusion and will weaken rather than strengthen the government. If it does not go this far, it will isolate Congress from the vital decisions which the administration must make and will increase Congressional frustration and ineffectiveness.

When the Constitution was written, it was thought that the Senate, which was then a small body of but twenty-six members, would act as an advisory body to the President, and it was provided in the Constitution that the Senate's advice and consent would be required for certain appointments and for treaties. The Senate, however, never became an advisory council. President Washington tested the plan early in his administration by personally attending a Senate meeting, expecting to discuss a proposed treaty with the Indians. Instead of discussing the treaty, the Senate referred it to a committee, and Washington walked off in a huff. Washington quickly learned the lesson that a partisan body like the Senate cannot be expected to give non-partisan advice. He never went back to the Senate.

When the administration wants to bolster its position before inaugurating some program, it occasionally secures the advice of Congressional committees, but this device, like that of consulting the entire Senate, does not always work well. There are three great handicaps to this procedure, advisable

though counsel may be in securing further support for an important program. One handicap is that the prevailing method for appointing committees does not ensure a membership which reflects the viewpoint of the parties, of Congress, or of the public. For the President to rely exclusively on the opinions of a group whose members are selected with such casualness would be to treat the formulation of policy less seriously than is warranted. Such consultation, however, has been found to be politically expedient.

The second handicap is the bi-partisan character of the committees, for on every committee the minority is given representation proportionate to that party's membership in Congress. To ask that the President confer regularly with members of the opposition, telling them his plans and asking their advice, is to mistake the nature of the political process. Washington discovered that it is hazardous to ask political advice from one's opponents. When a President reveals his program to his political opponents he risks their making what political capital they can out of the incident, and he can be almost certain that confidential information will be made public. The giving of counsel should, in general, be confined to those who are sympathetic with the ends one wishes to achieve.

The third handicap is that most Congressional committees are not organized along functional lines. Different committees handle different aspects of

the same general problem, so that a President is sometimes hard put to it to know precisely whom to consult.

Recent consultations with committees have not equaled the dramatic fiasco of Washington's experience, but at times the conferences have promoted discord rather than harmony. The results so far achieved are not commensurate with the possibilities of Congressional consultation. Several conferences have been marred by Congressmen talking out of turn and freely revealing to the public information which was given to them confidentially. It is imperative that the President secure the advice of somebody before initiating important policy, and if Members of Congress fail to respect confidences they will force the President to secure advice elsewhere. The most notable recent instance of Congressional indiscretion occurred in January 1939, after President Roosevelt met the Senate Committee on Military Affairs for an off-the-record talk on the seriousness of the brewing European war. To place the meeting in its proper time perspective, it should be recalled that the conference occurred four months after the Munich conference and eight months before the outbreak of war in September 1939.

A garbled version of the supposedly confidential conference was soon on the wires of the press-association trunk lines. After the conference several Senators talked freely to newspapermen and others

about the events of the day. What was actually said is not a matter of public record; what America heard was the isolationists' interpretation of the President's foreign policy. The phrase that America's frontier was on the Rhine was derided by those who found the tenor of the conference distasteful, but it was too late for the administration to put the phrase in its proper context, and it was impolitic to reveal the sources which correctly forecast the critical European situation. The aftermath of this conference was not an increased Congressional awareness of the impending international crisis; instead, the conference gave to the isolationists an opportunity to play politics with foreign policy.

Senator Lundeen, of Minnesota, told the Senate: "I think each Senator fully understands and can determine for himself what is his patriotic duty. We may meet that challenge some day and give full publicity to these secret conferences, not only that in the Military Affairs Committee but that in the White House itself. I happen to know that several Senators made notes of the conference in the White House, and these notes are now in existence. If Senators want to hear it, let a resolution be passed to that effect; and if the American people ever learn what was said then, the Nation would be shocked and stunned."<sup>3</sup>

During the same critical period Senator Nye, a member of the Military Affairs Committee, found

<sup>3</sup> Senator Ernest Lundeen, *ibid.*, March 1, 1939, p. 2072.

that the injunction of secrecy on information given to his committee prevented him from discussing foreign policy freely, and he withdrew from the committee meetings. "I find myself at this moment in a most uncomfortable position," the North Dakota isolationist said. "To free myself from the position there is but one alternative for me to pursue, and I here and now give notice of withdrawal from all executive committee meetings of the Military Affairs Committee in its present consideration of national defense measures."<sup>4</sup> He found it preferable, in other words, to talk without knowing the facts than to know the facts without talking.

After Ambassadors Kennedy and Bullitt had spoken confidentially before a joint meeting of the Senate and House Military Affairs Committees, Senator Clark, of Missouri, told the Senate how he had been importuned to tell what he had heard. "Before I had time to return to my office on the Senate side of the capitol," he said, "there had been half a dozen calls from newspapermen, and in the next fifteen minutes I received half a dozen more. I told them that I was under the seal of secrecy. They said that they already knew that so-and-so had been said, and they advised various Senators, including myself, that the members of the House were talking. I have no doubt that similar representations were made to House members as to the actions and expressions of Senators. So far as I was

<sup>4</sup> Senator Gerald P. Nye, *ibid.*, February 1, 1939, p. 1010.

concerned, I refused to discuss the matter, or to affirm or deny anything that was said.”<sup>5</sup>

Another notable leak was Secretary Hull’s confidential testimony before the Senate Committee on Foreign Relations on the Lease-Lend Bill. As the *New York Herald Tribune* reported the hearing: “From the Senators who came out of the room from time to time, bits of the testimony were pieced together. The Secretary of State was reported to have alluded to the dictators in such terms as ‘gunmen,’ ‘burglars,’ ‘highwaymen.’ Several Senators agree that if Mr. Hull’s language had been used in open hearings it might have produced a diplomatic incident. They were of the opinion that the Secretary of State had rightly called for a secret session in order to state his views more frankly to the committee than could be done in public.”<sup>6</sup>

Even though it is often advisable for the President to consult with Congress, a bi-partisan group such as a Congressional committee is a poor body for this function. Rather, it seems to me, Congressional counsel can best come from those who will not kiss and tell, from those who are in general agreement with the ends of the policy, and from those who will not use their information for partisan advantage. Bi-partisan advice does not necessarily decrease partisanship: rather it may increase it at the very point where a well-ordered and uni-

<sup>5</sup> Senator Bennett Champ Clark, *ibid.*, February 1, 1939, p. 1012.

<sup>6</sup> *New York Herald Tribune*, January 28, 1941.

form policy should prevail. On the administrative side, the President consults his administrators, those who will actually have the responsibility for carrying out the program, and it is but reasonable that the President confine his Congressional advisers pretty largely to those who support him politically. This does not mean that his advisers should be yes-men, but that the advisers should not be those who, because of their partisan predilections, cannot give impartial advice. There is plenty of room for argument and differences of opinion within the family circle. The time to allow the minority to have its say is before the actual execution of policy. When the time arrives to execute the policy, partisanship should end and, under the convenient usage of majority rule, the majority act for all.

Congress could participate further in formulating policy if it were given more opportunities to discuss and to vote on important questions. An example at hand where Congressional scrutiny would have been advisable before administrative action became effective was the order of the Federal Communications Commission calling for the dismemberment of one of the two radio networks owned by the National Broadcasting Corporation. This question was political as well as technical, involving as it did the important problem of the relation of the government to radio broadcasting. The question was thought to be of such major political importance that the Senate Committee on Interstate Com-



merce held hearings on a resolution requesting that the effective date of the order be extended. That the Federal Communications Commission might have executed a wise order is important, but also important is the part which Congress should play in shaping major governmental policy.

All administrative litigation, I presume, has some relation to the public interest, if no more than that it is in the public interest to see that justice prevails. In the radio case, however, the public interest was directly affected: the public was interested, for instance, in the type of radio program offered, and the economic question of competition and the political question of radio regulation transcended the interest of the chain owners. Who should be authorized to speak authoritatively on the policy of the government? The Federal Communications Commission now has this power with regard to radio (military control excepted), but the advantages which a commission possesses in having the services of experts do not qualify it to speak authoritatively for the government on questions which are partially political. Nor should the courts be the final arbiters, for if decisions are confined to questions of law, one does not get a more authoritative political answer than from a commission, and if the court decision enters into the merits of the case, one is in danger of referring political questions to the courts, a process which the courts themselves look upon unfavorably. Much controversy could be ended if we

would consider questions which are essentially political in a political manner; and questions affecting the social, political, and economic structure of the country are political.

Once an act is passed, Congress has no institutionalized method for further determining what policy will be followed. It is given no opportunity to consent or object to administrative policy of great public concern. Under the broad authority given by delegated power, administrative agencies can often issue orders which deeply affect the public but which are not further considered by a legislative body. I should like to see it made possible for Congress to consider some of these questions. The bureaucracy quite rightly relieves Congress of deciding many minor issues, but some of these questions are extremely important politically and should, I believe, be discussed in the national political forum. Although Congress discusses many questions which are inherently political in enacting legislation, these discussions do not exhaust the supply of political questions associated with that legislation.

The British have attempted to solve this problem by means of a system of Provisional Orders which allows certain types of administrative rulings to lie before Parliament before becoming effective. Under this system, rules made under the authority of delegated power come under four classifications: rules which are trivial in nature and which are under the complete control of the administrative de-

partments; rules which are effective at once but which are subject to Parliamentary annulment within a specified time; rules which become effective within a specified time provided Parliament takes no action to the contrary; and rules which become effective only upon the further consent of Parliament.

Mr. Robert Luce, of Massachusetts, a Member of Congress for many years and a thorough student of the legislative process, has suggested that a similar plan of further controlling delegated legislation be adopted by Congress. "Congress could wisely at once get rid of no insignificant part of its labors," he says, "if it would apply the provisional system to such matters as the affairs of the District of Columbia, bridge bills, pensions, correction of military records, much other private legislation, and the major part of the details incident to the administration of revenue laws, banking laws, and indeed most of the other laws that concern simply the machinery of government."<sup>7</sup>

One exception to the usual American practice of once-and-for-all delegation of power was the Reorganization Act of 1939 (now lapsed), which provided for a sixty-day period in which Congress, by a concurrent resolution, could annul an Executive Order issued under the authority of the Reorganization Act. Although Congress annulled none of the orders, the plan did provide a method for Con-

<sup>7</sup> Robert Luce: *Congress; An Explanation*, p. 146.

gress to examine policy formulated by the executive before that policy became effective. It may be said, of course, that Congress can pass a bill which would annul any administrative order of which it disapproved, but such a method would compel Congress to have an extraordinary majority in both houses in the event of a presidential veto, and, in addition, such a bill might not be passed until some time after the administrative order became operative.

The desirability of making Congress partially responsible for important decisions has been further stressed by Dean James M. Landis, of the Harvard Law School, who has had administrative experience as a member of the Federal Trade Commission, of the Securities Exchange Commission, and of the Office of Civilian Defense. Dean Landis says: "Frequently the administrative is faced with the need to exercise a power that lies within the limit of its statutory grant; but the subject matter happens to be of such great public concern that it is desirable to have the more direct democratic processes of our government participate in the decision. An illustration . . . may serve to give point to this problem. Under the statutory authority that had already been granted to him, the President had the power to commit the nation to large expenditures in connection with the Florida Ship Canal. The project, however, partly because of the amount of expenditure that it entailed and partly because it had for various reasons already become the subject of political debate and

conflicting allegiance, differed considerably from the regular public works projects to which the President was authorized to allocate public monies. For these reasons it was an act of political wisdom to put back upon the shoulders of the Congress the basic question as to the desirability of allocating the money necessary for the development of this project."<sup>8</sup>

The fact that the departments and commissions rather than Congress make important administrative decisions does not lessen the fact that effective pressures are at work attempting to influence these decisions. The worth of many of these pressures can best be decided in Congress, I believe, for there the compromise will be placed in the open; full publicity will be given to the cause of each side; and the policy, enunciated with the backing of a Congressional majority, will be more authoritative. The commissions are excellent for adjudicating disputes between individual parties or between the government and individual parties, for when the parties at interest are definitely known, procedures can be worked out to provide safeguards for ensuring that justice is done. But when the disputes affect the public interest, it might be well to bring Congress into the process.

The members of the commissions are relatively independent, for they are not removable by the Pres-

<sup>8</sup> James M. Landis: *The Administrative Process* (New Haven: Yale University Press; 1938), pp. 76-7.

ident and they are not under Congressional control except in a nebulous manner through appropriations. The latter control is more effective on the general administrative routine of the commissions than on questions of public policy. It is going too far to say that once the Communications Act of 1934 was passed, for instance, setting up the Federal Communications Commission, the interest of Congress in broadcasting was permanently transferred to an independent commission and that henceforth the entire governmental policy on broadcasting was to be formulated by this commission. Independent commissions have a vital place in the administering process, but it is not their job to formulate all public policy relating to their special fields. To quote Dean Landis again, giving Congress additional control over administrative rulings would allow the bureaucracy to serve "as the technical agent in the initiation of rules of conduct, yet at the same time to have the legislative share in the responsibility of their adoption."<sup>9</sup>

The proposal advocated by Dean Landis and Congressman Luce for allowing full Congressional participation in certain types of policy formulated by the administration is, I believe, the correct one. A proposal recently made by the *New York Times* aims in the right direction but misses the mark in that it advocates that the power of review and consent be placed in Congressional committees. The

<sup>9</sup> Ibid., p. 77.

*Times* proposal follows: "As the powers exercised by the bureaus and commissions are those that have been delegated to them by Congress, Congress should be kept constantly and systematically informed regarding the use to which those powers are being put. This could be done in several ways. Either a standing committee of Congress might exist for this very purpose, or each commission might deal with the particular Congressional committee accustomed to passing upon the matters with which that commission is primarily concerned. Each commission could be required normally to submit its proposed regulations to the appropriate Congressional committee for approval before they were put into effect. If the Government agency and the Congressional committee could not agree regarding the desirability of a particular regulation or regarding some other policy followed by the agency, then the committee could call the matter to the attention of the whole Congress and offer its recommendations."<sup>10</sup>

The *Times* proposal seems to me to be fatally weak in that it would not provide for the full Congressional consideration of administrative policy. Unless Congress is reorganized on a different basis, I see no value in giving additional power to committees which may not be representative or in jeopardizing the work of the agencies by making their ac-

<sup>10</sup> *New York Times*, January 16, 1939.

tion dependent on the sanction of possibly hostile Congressional committees.

For major policy questions, the best procedure is to combine the expertness of the administrators with the political consent of Congress. The administrative agencies are proficient in gathering facts and in presenting the issues. The combination of the political talent of Congress and the expert, fact-finding talent of the agencies should provide a public policy more wise than that enunciated by Congress alone and more stable than that enunciated by a commission alone. Nor need one fear that Congress would necessarily be a nettlesome meddler, unsympathetic with what the agencies are doing. It should be remembered that Congress was at one time sufficiently sympathetic to have created the agency, that the economic forces which motivate commissions also motivate Congress; and that Congress, composed as it is of an intelligent and politically alert group, is capable of deciding important political questions. I am aware, of course, that Congressional action is often petty and that Congress might make capital out of an otherwise meritorious administrative order. I think, however, that Congress is often petty and narrow because its sights are not focused on national events; that because it has no definite part in formulating continuing national policy it often amuses itself by manufacturing inconsequential issues. Congress is not always as serious as



it should be because once legislation is passed, Congress is rarely called upon to decide important questions of policy. To give Congress more important questions to decide would, I believe, make it a better institution than it is now.

## CHAPTER VII

### HOW CONGRESS SPENDS THE MONEY

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#### *1. Who Gets What? 2. The Consideration of Appropriation Bills*

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##### *§ 1. Who Gets What?*

INSTEAD of passing a budget bill each year, Congress appropriates money by passing a large number of appropriation bills which are full of verbiage on how much money can be spent for very minute objects. The procedure is very similar to that of a man who wishes a house built for him; he allocates so much money for nails and lumber and plaster and shingles and then tells the carpenter to build the house with that material; the owner learns how expensive the house will be after he has allocated all of the items, and he learns how large the house will be after the carpenter finishes his work. If the owner wants a smaller house the following year, he will buy fewer nails and a smaller amount of plaster and let the carpenter go to work again. Some rooms may be full of furniture, other rooms full of doors, but the carpenter must follow orders

not only on what he can buy but also on how technical details should be performed.

There is little uniformity in appropriations for departments or for bureaus. Some bureaus receive money in large lump sums, while others receive it in detailed grants. Money is appropriated for activities in one department and for objects of expenditure in another. The military establishment receives funds for organizational units, the naval service for specific objects, such as pay, subsistence, and transportation. The present bill form results not from planning but from long legislative accretions. In the reform of 1922, appropriation bills were revised to conform to administrative units, but no perceptible change was made in their content.

The most pronounced characteristic of appropriation bills is their complexity of detail. The budget itemization is not a guide for discretionary administrative spending; this itemization, rather, is often carried over to the appropriation bills and made mandatory. Appropriation bills are complex because the objects for which money can be spent are itemized and because legislative restrictions determine how money can be spent.

By itemization Congress determines precisely how much may be spent for very small segments of the activities of the federal government. By appropriating money for very small amounts — and some of the items are for only a few thousand dollars — Congress assumes the burden of allocating money

equitably and economically. Much of this burden of allocation should be an administrative function, for the administrators are in a better position to determine where expenditures really can be cut or where more expenditures are needed. But when Congress itemizes, the responsibility of the administration is assumed by the legislature. If Congress attempts to cut any particular appropriation it must say precisely where that cut should be made; and if it names the cut, the interested parties are able to appeal to their Congressmen, and particularly their Senators, to have the cut reinstated. Members of Congress are thus placed in the position of either asking that the cut be restored or of assuming the responsibility with their constituents for making the cut. For instance, one year the Bureau of the Budget suggested reducing the appropriations for the Bureau of Etymology of the Department of Agriculture, a cut which would have eliminated two Pecan Insect Investigation Laboratories, located in two different states. The Congressional delegations from those states protested vigorously against these cuts, and the cuts were finally restored.

The questions in the minds of the Congressmen are: does the appropriation bill contain any provision for flood relief in my district; how much is appropriated for an access highway between Blairville and Rapadan; are the waterways on the Gulf of Topeka included; are the appropriations raised for the shipyards on Pig Island; does my district get a new

bomber field? In every stage of the procedure of Congress the emphasis is, for the most part, on the small amounts rather than on the total fiscal picture.

The following excerpt from a House debate in 1942 on the Naval Appropriation bill demonstrates this point:

Mr. Leavy. I desire to say to the gentleman that I had no idea of making an odious comparison in any way between Philadelphia and any other navy yard. The one at Bremerton has received consideration perhaps in proportion to Philadelphia.

Mr. Ditter. May I say in answer to the gentleman right at that point that certainly Bremerton could not have been short-changed or poorly provided for as long as the persuasive abilities of my distinguished friend from Washington are present here in the Congress. They got more than their share of the good things in this bill. . . .

Mrs. Rogers of Massachusetts. What is provided for the Boston Navy Yard, with its very fine workers and very fine yard?

Mr Ditter. I can answer the gentlewoman from Massachusetts by saying that as a result of her continued interest and her suggestions to Members of the minority on the committee, and as a result of the very able work of the distinguished member of the subcommittee from the State of Massachusetts, my genial friend, Mr. Casey, I think that New England has gotten her share too."<sup>1</sup>

Senator King once expressed rather caustically his impatience with the Senate's habits: "In my opinion," he said, "Senators individually and col-

<sup>1</sup> Representative Edith Nourse Rogers, *Congressional Record* (temporary edition), March 14, 1942, pp. 2323-24.

lectively do not give to the consideration of appropriation bills that serious and earnest attention which they should. We have before us today's bill calling for appropriations of more than \$1,300,000,-000 in the aggregate. There were 20 Senators present before the able chairman of the subcommittee began explanation of the bill and its most important provisions, and at the conclusion of his statement less than 10 Senators were present." <sup>2</sup>

The reasons for the Senate's casual treatment of appropriations are not satisfactorily explained by charging the Senate with indifference, as Senator King did. The reasons are deeper and more complex. In truth, the Senators are only superficially indifferent, for in the smaller items which affect their interests they are much concerned indeed and, if necessary, are ready to fight for those interests. The fact that they do not always have to make a fight, that Senatorial custom is geared to individual deference, does not mean that the Senators lack interest in appropriation bills. Their interest is attested to by the fact that in every year since the passage of the Budget and Accounting Act the Senate has increased the amount reported by the Senate Committee on Appropriations. In every year except one (1932) the Senate has increased the amount reported by the House Committee on Appropriations and the amount agreed to by the House.

<sup>2</sup> Senator William H. King, *Congressional Record*, May 8, 1939, p. 5220.

Congress also adds various types of legislative riders to appropriation bills, and by these riders it is possible to direct the administration more minutely in the spending of funds. Direction is not a bad thing in itself, but the present method is bad, for the riders are not always discussed thoroughly in Congress. If Congress considers the merit of specific riders, its attention is diverted from the broader questions of policy. And if Congress discusses policy adequately, it has neither time, inclination, nor knowledge to debate the details of the bills. The result is that restrictions usually go by default, without consideration by Congress, and with the President deprived of an opportunity to veto the restriction without vetoing the entire bill. Occasionally, if there is some major administrative dereliction, restrictions might be placed on spending, but ordinarily it would be better for the administration to guide the spending of funds. An adequate check through a post-audit of government accounts would then give Congress more information of government spending, and more control of it, than through legislative restrictions.

The Senate is more prone to add legislative restrictions than is the House, and there is a better chance that such restrictions will be accepted. The Senate does not compile its precedents — as the House does in the works of Hinds and Cannon — nor is there need, for the Senate is not squeamish over the legality of riders. By use of legislative restric-

tions the Senate can control administration in which it is interested. Some Senators were once aroused by what they considered to be the wastefulness of illustrated pamphlets distributed by the Works Progress Administration. To prevent the Works Progress Administration and other agencies from advertising their work too highly, Senator O'Mahoney secured an amendment preventing departments and agencies from sending out post-free (so-called penalty) mail unless specifically requested.

In the House, Representative Frank E. Hook attempted to discredit this method of legislation, but he was unsuccessful in having the House reject the conference report containing the amendment. Representative Hook said: "We all know that legislation on an appropriation bill is not allowed in the House of Representatives, but this legislation is attached to an appropriation bill in the Senate. . . . The only restriction is that it must come back here to the House for a separate vote. No hearings were had on this vital subject. The departments that are supposed to be running wild were not called in. The departments that have been adhering strictly to the rule were not given an opportunity to appear and show the necessity for the privilege in their departments. I am fully aware that this amendment is to strike at the volume of franked mail that was sent out under the Works Progress Administration. . . . I think this should be brought up by the appropriate committee of the Congress and the officials of



the departments that have been violating the franking privileges should be called in and questioned with regard thereto. We should find out who is responsible and stop it in a proper manner and not by a back-door method of this kind.”<sup>3</sup>

The Senate does have rules against attaching legislative riders to appropriation bills, but examples of the failure of the Senate to invoke points of order against such legislation are not difficult to cite. On February 21, 1939, for instance, Senator Byrnes introduced an amendment denying re-enlistment gratuities to enlisted men of the military service. When a point of order was raised by Senator LaFollette, Senator Byrnes gave the Senate notice of a motion to suspend the rule prohibiting legislation on appropriation bills. The following day Senator LaFollette announced that “yesterday I made a point of order against the amendment offered by the Senator from South Carolina, upon information which at the time I believed to be accurate and reliable. Upon further investigation I find that in some important respects that information was erroneous. Therefore, I ask unanimous consent to withdraw the point of order.”<sup>4</sup> If the amendment was legislation one day, it seems to me that it was legislation the following day. This incident shows that, to a certain extent, the point of order is not used to protect appropriation bills from legislation but to protect individual

<sup>3</sup> Representative Frank E. Hook, *ibid.*, April 27, 1939, pp. 4876-7.

<sup>4</sup> Senator Robert M. LaFollette, *ibid.*, February 22, 1939, p. 1731.

Senators from legislation which they do not want.

The sentiment that justice rather than legality should determine the exercise of the point of order was once tersely expressed by Senator Johnson, of California, advocating an amendment to protect the branding of California cognac. "I throw myself for this time upon the mercy of the Senator from Colorado," said Senator Johnson, after a point of order had been made, "in the hope that the justice of the case being so appealing he would permit the amendment to go into the bill, as frequently amendments are permitted to be made to other appropriation bills."<sup>5</sup>

### *§ 2. The Consideration of Appropriation Bills*

The key to Congressional consideration of appropriation bills is the House Committee on Appropriations, and there is no committee in Congress which works more diligently or which feels a greater sense of responsibility for what it does. The hearings by this committee are the most important continual check which Congress has over the administration, and they cover in great detail the activities of the governmental units. The hearings begin in the House in December, before the budget is sent to Congress, and last until the final appropriation bill is passed in June; and witnesses appear from both within and without the government.

<sup>5</sup> Senator Hiram W. Johnson, *ibid.*, February 6, 1939, p. 1152.

Important though the hearings are as a method of administrative control, the questions are not always posed so that the real issue is brought out. Congressmen ask inconsequential questions, and the administrators tell the committeemen things which they neither need nor wish to hear. There is a need for more understanding on both sides. The Congressmen would be better able to meet administrators on their own ground if buttressed with more information. This information could be secured through their own committee staff and through an auditor who would report to Congress on the fidelity of administrative accounts. Bolstered with this knowledge, administrators and Congressmen should be able to meet on a more common ground — to accept the routine, to ignore the inconsequential, and to scan the controversial.

A significant feature of the hearings is that neither the questioners nor the questioned are experts. For the Congressman, the hearing is a chore which must be performed. It is but a part-time job, yet he faces a man who is on the job every month of the year. The Congressman is sure that his knowledge is incommensurate with that of the man he faces, and that, however much he may wish to guard the people's money, the odds are with the smooth bureaucrat who can gloss over shortcomings and point up favorable features. The administrator, on the other hand, feels that he is a novice in discussing public problems. If he were more adept at speak-

ing, if he were quicker on his feet, he might have been a politician himself. He knows his job, he wants recognition for past services, and he wants to put into effect other ideas he has been planning. He must face a group of Congressmen, however, some of whom are unsympathetic and all of whom, he feels, have a knowledge of his subject inferior to his own. He is sure that the odds are with the Congressman who can talk in public, who has the assurance of sympathetic colleagues and familiar surroundings, and who can ask embarrassing questions while ignoring achievements.

Congress is often critical because officials have a propensity to extend their work and to magnify the importance of their own bureau. It is well, however, that this propensity exists, for it is essential that ambition and imagination be preserved in administration. Bureaucracy needs checking in order that it will not grow rampant, but it also needs sympathy in order that it will not stagnate. The duty of Congress is to understand the problem, to command when necessary, and perhaps to say no.

Consideration of appropriation bills on the floor of Congress is not always of a high order, nor does it always measure up to the importance of the subject discussed. Debate varies greatly, both in time consumed and in general interest, but on the whole it is better in the House than in the Senate. For some appropriation bills, such as that of the Interior, where Congressmen have a considerable personal

stake in the precise amounts, debate is extensive, although sometimes petty, and interest is high. For other appropriation bills, such as that for Military Affairs in the days before the war, the deserved attention is not given — a neglect caused by the lack of interest in Congress, stemming in part from the manner in which the bills are considered.

In 1939, for instance, speeches on the following subjects consumed the first day's debate in the House on the Military Affairs bill: the agricultural subsidy, the 1932 Democratic platform, the anniversary of Texas independence, former Secretary of Agriculture, Arthur M. Hyde, anthracite coal, an NLRB case, a Supreme Court decision, the first Congress, war hysteria, the commodity credit corporation, communists, agriculture, reserve officers, and the Social Security Act. Toward the end of the debate there were but twenty to thirty Members on the House floor. Instead of debating important foreign policy underlying the amount of military appropriations, the House frittered its time away with persiflage. Why? Because the questions are not presented so that Congress can first define its policy and then supplement that policy with funds. Congress attempts to determine details first, and not having adequate knowledge to do this intelligently, it discusses questions more intriguing, about which its Members are better informed.

The House debate under the five-minute rule when the bill is read by amendment is, on the whole,

superior to that under general debate. Mr. W. F. Willoughby's statements that "no other Government that I know of has anything like as effective a system of criticism as we have in our Government," or that "there is no debate on the floor of the House [of Commons] that approximates our discussion under the five-minute rule,"<sup>6</sup> may be true, but the system is not without fault. The major fault is the failure of the House to discuss regularly major issues, a failure which is due to incomplete knowledge and to the method of considering the budget. Members of the committee are fairly well acquainted with departmental problems through hearings and through conversations with officials. Other Members of Congress are not so well informed; they rarely bother to read the bulky hearings, nor are they supplied with information from the Comptroller General on the conduct of departments. Despite these shortcomings, the House debate under the five-minute rule is often informative, and it offers a real opportunity for dissident Members to criticize the administration of departments and agencies.

The traditions of the Senate make it possible for the individual Members to exert more influence on the content of an appropriation bill than do the Members of the House. It is easier for a Senator to change (usually raise) appropriation amounts, and

<sup>6</sup> W. F. Willoughby, House Hearings, *National Budget System* (1919), pp. 60, 58.

it is easier to insert legislative riders. The Senators' interest in the individual amounts of bills generally exceeds their interest in the bills as a whole. The appropriation bills are usually not debated very long or very thoroughly, and there is not a great deal of interest in the bills themselves. This Senatorial indifference has been deplored by conscientious members, but admonitions are not enough to shake the Senate from its lethargy.

The final compromises on appropriation bills are resolved in conference between the two Houses. Of all legislative practices, the conference is the most occult. Available knowledge of its operation is not commensurate with the power it exercises over appropriations. Congressional procedure has become increasingly democratized — the printed committee hearings, the open executive session, the decline of the caucus — but the operation of the conference committee is not yet a matter of public knowledge, nor indeed of much public interest. We know who is appointed to the conference committee, we know the difference between the House and the Senate bills, and we know the final decision; but we know neither the methods by which the final decision is reached nor the reasons for it. The conference committee has a wide range of choices, for the totals of the House and the Senate bills may vary considerably. In a bicameral legislature compromise is essential, but I believe that both Houses should give more

consideration to the compromises effected by the conference committee. The Houses may spend many days determining the correct appropriation amount and only minutes considering the conference committee report.

Although it is sometimes necessary for the conference committee to meet more than once, most appropriation bills are reconciled at one conference and the report accepted with a minimum of debate. The results of conferences indicate that the Senators are better bargainers than the Representatives in securing both appropriations and legislation. The House occasionally displays impatience at the success of the Senate conferees, but this impatience rarely goes so far as a vote against the conference report. Once when the Senate receded \$1,300,000 on 16 items and the House receded \$13,065,950 on 25 items, Representative R. F. Rich said: "The question is, will the House continue to yield? Will the House stiffen its backbone, or will you continue to be jelly-fish, wishy-washy representatives of the people or tweedledees or tweedledums? That is the question that will be in the minds of the American people."<sup>7</sup>

There are important indications that Congress itself is not satisfied with the present procedure, although there is a singular lack of unanimity on the

<sup>7</sup> Representative Robert F. Rich, *Congressional Record*, May 1, 1939, p. 4974.



causes or the cures for this dissatisfaction. Senator King once suggested the creation of what would be in effect an independent bureau of the budget; a similar proposal has been made by Senator Davis; and Senator Byrd recently sponsored a resolution creating a joint committee to cut down non-essential expenditures. A further indication of Congressional discontent is shown in a criticism of Representative Karl Stefan, himself a member of the House Committee on Appropriations. Congressmen, said Representative Stefan, "are groping pretty much in the dark on how much money we should or should not appropriate for the various activities of the government. We are entirely dependent upon the honesty and competence of the department and bureau heads who appear before us showing justifications for these expenditures. . . . I feel that this Congress should give immediate study to the possibility of employing disinterested experts — men who know costs and who know something about efficiency and coordination of business so that that knowledge may be applied to expenditures in the government establishments."<sup>8</sup> This opinion is shared by Representative E. M. Dirksen, who believes that "there is something just a little farcical at times about the way we are constrained to get information out of the government departments. . . . You can set down a very beautiful balance sheet, but it does not indicate to the people's repre-

<sup>8</sup> Representative Karl Stefan, *ibid.*, February 16, 1939, p. 1504.

sentatives precisely what is going on in the government."<sup>9</sup>

A popular suggestion for improving fiscal procedure is to give the President power to veto specific items in appropriation bills. Many states now provide for this procedure in their Constitutions. Although the practice of itemization and restriction has severe drawbacks, I believe that it is better for Congress to assume full responsibility for the budget which it passes rather than play hide-and-seek with the President on particular items. The cure for the evil of itemization is the establishment of new budget procedures and a new budget bill; the cure is not to place the full responsibility on the President for the deletion of certain undesirable items. The whole theory of itemization is so faulty and so at odds with principles of public administration that it cannot be made respectable by allowing the President to strike out some of its most obnoxious results.

Congress needs to be continually informed of the administration's conduct through an adequate audit. We don't have such an audit now. When the Budget and Accounting Act was passed, it was assumed that the Comptroller General would become a staff agency of Congress, supplying it with governmental audits and conducting special investigations. Strangely enough, this function of the Comptroller

<sup>9</sup> Representative Everett M. Dirksen, *ibid.*, February 7, 1939, p. 1201.

General has never been developed. For years the Comptroller General has engaged in what might be called a running fight with the government. This is not the place to review the numerous altercations between the Comptroller, the Treasury Department, the War Department, and many others, or to say who was right. In the public eye these fights gave the Comptroller General the role of watchdog of the Treasury; nevertheless, the Comptroller never became a Congressional informant.

Briefly, the Comptroller has placed an undue emphasis on the legality of spending. Contrary to popular opinion, this emphasis does not necessarily mean that any money is saved or that Congress is enlightened, for what is disallowed for one object may be spent for objects found legitimate. In other words, the wisest type of spending might be that which the Comptroller thinks illegal, which means that the Comptroller General often forces departments to spend money for unwise objects. Inasmuch as total appropriations are determined by Congress, the Comptroller General's action in disallowing items is of limited effect on the total amount of money spent.

The Comptroller General enforces appropriation restrictions, but he does not tell Congress whether these restrictions are wise or unwise, whether they hamper or aid good administration, and whether they save or waste money. Congress should know the answers to these questions, but the

answers cannot be learned without an adequate audit. The Comptroller General acts as if Congress were omniscient in framing appropriation bills and as if his duty went no further than executing this omniscient will. Congress is not omniscient, as it would be the first to admit, and it places restrictions on appropriation bills because it has no better method of controlling spending.

The following incident demonstrates the emphasis which the Comptroller General places on the legality of expenditures. In October 1939 Mr. H. Earle Russell, the American Consul General in South Africa, was directed to ship to the United States the personal effects of a Foreign Service officer. The law provided that personal effects of Foreign Service officers should be sent "on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag." Inasmuch as Mr. Russell was four hundred miles from Johannesburg, where the effects were stored, he could not personally supervise the shipping, but he wrote the storage company that shipment "must be made by an American Steamship Line." As it turned out, however, the goods were sent on a ship under Finnish registry which had been temporarily chartered for a single voyage by an American line; considerable time was saved in transit by having the goods shipped on this boat. This was the first time in years that any but a ship

of American registry had been used on this particular steamship line. Mr. Russell was not notified of the ship's registry until twelve days after the boat had sailed.

When the accounts were submitted to the Comptroller General, the Comptroller refused to allow the payment of \$320.86 which Mr. Russell had made, and he forced Russell to repay this money into the Treasury. The only recourse Russell had was to persuade Congress to pass a private bill. "I would suggest that you refer this matter to your Senator or Representative," a State Department official wrote him, "with a view to the introduction of a private relief bill. . . . You realize, of course, that the Department cannot take the initiative in such matters."<sup>10</sup>

The Comptroller General did not save the United States any money by this procedure, and the time of many administrators and of Congress was consumed during the two and a half years the question was being adjudicated. What was accomplished? What was saved? Who benefited?

A better procedure would be for the Comptroller General to inform Congress how money has been spent unwisely. Instead, with the present emphasis on legality, the individual administrator must inform Congress of amounts which the Comptroller General has disallowed, and Congress must decide as

<sup>10</sup> House Report No. 1333, 77th Congress, 1st session.

to their equity. The Comptroller General is not the adviser which he should be, and Congress learns very little from administrators with short accounts which will assist it in determining fiscal policy.

When the Budget and Accounting Act was being considered, it was thought that the information reported by the Comptroller General would enable Congress to check the operation of departments without itemizing appropriations. As Mr. Swagar Sherley stated, an auditor should "report to and aid the committee on expenditures." The value of this "is going to be that you will vote your money, when you come to details, in a very different form. . . . For illustration, take the Bureau of Fisheries: How absurd it is to appropriate for the Bureau of Fisheries in little sums for every fish hatchery in the country. . . . All of your detail does nothing except to force Congress into consideration of little things that are beneath its dignity. The great House of Representatives ought not to enter a debate as to how much an ordinary employee of the government should be paid for a given piece of work, except, of course, when abuses are discovered. . . . If your auditor general performs his functions, he will be able to tell you whether the Bureau of Fisheries is efficiently administering the moneys voted it; and the remedy, if they are not, is not to curtail the service by restrictions, but it is to chop off the head of the inefficient officer and put somebody at

the head of the service who is efficient. That will give you the freedom that the House wants for the discussion of problems of government.”<sup>11</sup>

The need for administrative discretion in many enterprises has caused Congress to forego the audit of the Comptroller General rather than tolerate his interference with administrative decisions. Some governmental units, such as the Reconstruction Finance Corporation, have substituted private audits for those of the Comptroller General, from which they are legally exempted. A superior course would be to improve the technique of the audit so as not to interfere with the agency's operation while at the same time giving Congress a comprehensive knowledge of how funds are spent.

<sup>11</sup> Swagar Sherley, House Hearings, *National Budget System* (1919), p. 451.

## CHAPTER VIII

### THE FUTURE OF CONGRESS

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- 1. There Are Too Many Committees. 2. Congress Is a Body without a Head. 3. Communications Are Poor. 4. Congress Needs New Purse Strings*
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#### *§ 1. There Are Too Many Committees*

GRANTING Congress' limitations, and granting, too, its immense powers, both actual and potential, what do we expect of Congress in the future? Although one cannot readily foresee all of the political problems which Congress must face, it can be said that primarily Congress must make certain that our great government operates efficiently and equitably. In the future Congress must decide many important issues, for after winning the war we shall have to redetermine our place in the world economy and to reorient our domestic economy. If Congress is to consider these issues with the earnestness which they deserve, Congress must reorganize itself so that it can think more clearly and so that it will rid itself of the trivia and the routine which



now consume so much of its time. Congress should think less and talk less and act less about protecting the interests of special groups, and it should assume a greater responsibility for forming a national and an international policy. Part of this reform can only be achieved through education and experience which will slough off old behavior patterns and old mental attitudes. Part of this reform can only be achieved by reorganizing Congress along new lines of power. Our political system is less rigid than is often imagined, and the depth of institutional experimentation has not yet been plumbed. It is possible under the Constitution to have a government which meets the twentieth-century demands for action and which still remains responsible for its action. We should make short shrift of those who are over-complacent with our present political arrangement, with those who are so enamored of the parliamentary system that they believe adequate adjustments cannot be made under the Congressional system, and with those who, confused by inactivity and contradictions, believe that an authoritarian government is the only answer.

I have four general suggestions which, I believe, would improve the position of Congress as a thinking agency and as an agency which supervises the operation of the bureaucracy. I propose, first, that the committee system be reconstructed from the anarchy in which it now reposes; second, that the committee heads be organized into a political group

of twenty or less to be known as the Legislative Cabinet; third, that methods be evolved for better communication between the administration and Congress; fourth, that an improved budget procedure be established.

The committees of Congress have grown pretty much like Topsy. When Congress was first established, special committees were appointed for each piece of legislation introduced, but gradually the system of standing committees was established, the number of which has fluctuated greatly over the years. At times in the past there have been even more committees than there are now, but the present allotment of 33 standing Senate committees, 12 special Senate committees, 47 standing House committees, 6 special House committees, 7 joint Congressional committees, and 20 commissions, visiting boards, and the like, seems more than ample. There is not a great deal of co-ordination between the actual administrative organization of departments and the organization of Congressional committees. Under the present arrangement, it is almost impossible for any committee to study and to evaluate the work of a department.

I believe that a better organizational plan would result by reducing the number of legislative committees to not more than ten in each House and by electing the chairmen in the party caucus. The committee chairmen would compose a Legislative Cabinet which would have more authority for directing

the energies of Congress than any group does now. This proposal would, I believe, go a long way toward satisfying the need for direction from the top and at the same time it would preserve the best parts of the committee system, and Congress is accustomed to functioning through committees.

The best plan would be to use the same general organization for each House, for this would provide a greater measure of harmony in Congressional law-making. The committees in each House could be pruned to fit a nine-committee organization such as this: Agriculture; Budget; Finance; Foreign Relations; Industry; Judiciary; Labor and Public Works; Military Affairs; and Naval Affairs. I shall describe briefly how the existing Senate committee structure would be transformed into these nine committees; the problem in the House would be similar.

The Committee on Agriculture would be a development of the present Committee on Agriculture and Forestry, but it would also include the committees on Irrigation and Reclamation, Public Lands and Surveys, and Indian Affairs. The Budget Committee is, of course, the Appropriations Committee under a new name, but its duties should also include personnel and audit problems and it would absorb the committees on Civil Service and Expenditures in the executive departments. I have also placed the District of Columbia committee here, too, because of the close financial link between the District of Columbia and Congress. The Committee on Finance

might well absorb the Committee on Banking and Currency. The Committee on Foreign Relations would absorb the Committee on Immigration and the Committee on Territories and Insular Affairs. The Committee on Industry would amalgamate the numerous committees now dealing with specific segments of the larger subject. It would combine the present committees on Commerce, Interoceanic Canals, Interstate Commerce, Manufactures, Mines and Mining, and Patents. Under the present arrangement laws dealing with anti-trust legislation are referred to the Committee on Judiciary, but I believe that a Committee on Industry would be better able to cope with the whole problem of monopolies and restraints on trade. The Committee on Judiciary would be given jurisdiction over the housekeeping functions of the Senate and would absorb the Committee of Audit and Control of the Contingent Expenses of the Senate, the Committee on Enrolled Bills, the Committee on Library, and the Committee on Rules. It should also absorb the committees on Privileges and Elections, on Claims, and on Pensions, but some of the functions of the latter two committees could be better transferred to the departments. The Committee on Labor and Public Works would be a development of the present Committee on Education and Labor. It would absorb the committees on Public Buildings and Grounds and Post Offices and Post Roads, and would be given definite jurisdiction over housing, public

works, and social-security legislation. The Committee on Military Affairs and the Committee on Naval Affairs are logical units at present, giving the present organization of our national defense, and need not be changed.

The decrease in the number of Congressional committees would be a boon to the Members who now frequently divert their attention to many small problems, and not always the most important problems. It would no longer be necessary for a member to dissipate his energies on some unimportant committee. He would at last be an integral part of the big show. Some present committee chairmen would, to be sure, lose their present jobs, but they would be compensated by being given a greater part in deciding the real political issues of the day.

The proposed organization of committees would eliminate some of the evils of bicameral legislatures, for with regular meetings of the Congressional Cabinet it would be possible to prevent many present duplications of effort and to iron out in advance efforts working at cross-purposes. The proposed organization would also satisfy the need for specialized investigation of technical subjects, which could be made by specially appointed subcommittees. Under the proposed plan, however, such studies would be better directed, they would not overlap, and they would be tied in with the broader policy of the full committee. For instance, a study of patents by a subcommittee of the Committee on Industry would not

be made in a vacuum, but it would co-ordinate its findings in the full committee with other findings from subcommittees studying say, monopolies. Administrative units would also be much better organized than they are now by centralizing the responsibility for control of a particular agency in a single committee.

I know the difficulties in securing the adoption of such a plan: I know the high esteem which committee chairmen have for their jobs and their reluctance to yield hard-gained political prestige; I know the anticipation with which Members of Congress look forward to becoming chairmen of a committee; I know how tender and sentimental Congress sometimes is, and how it would hesitate to lower a Member's rank; I know how difficult it is for Congress, or anybody, to break away from old habits long formed. On the other hand, I know how suddenly, or even impulsively, Congress can act when the public clamors for action. In order that possible action on Congressional reorganization be rational and well considered, I suggest that Congress create at once a joint committee to study Congressional deficiencies and to advocate plans for reorganizing the power structure within Congress.

*§ 2. Congress Is a Body without a Head*

The Legislative Cabinet in each House, composed of the chairmen of the various committees, would

have authority over the committees and would be responsible for determining legislative policy: that is, it would determine what bills should be considered, when they should be considered, and the amount of time which should be allotted, both in the hearing stage and in the debate stage. The committee cabinet would supplant the other political organizations in both Houses, or, to state it another way, the real political leaders would become the chairmen of the committees.

The present position of the Senate Leader is an impossible one. He doesn't have any very effective means of implementing his leadership, he doesn't have very much control over the committees considering legislation, and he has no method for coordinating legislation now being considered by several committees. In the House the political leaders must share their authority with the Rules Committee, which determines what legislation is to be considered; with the Steering Committee, which advises on legislation; and with the Committee on Committees, which determines committee membership. The splintering of policy is more prevalent in the House than in the Senate because of the larger number of committees.

The Congressional Cabinet would be strong, but in these days it is necessary that those having responsible positions should be strong. In addition, however, the Congressional Cabinet would be re-

sponsible, and it would be possible to tell at any time where lay the responsibility for action or inaction. Irresponsible action could be cured by removing the offending man from office or by forcing him to represent the desires of those on whom he depends for support; it is important that the location of power be specific, rather than diffused among a large number of irresponsible groups, such as under the present arrangement of power. A Legislative Cabinet of 18 is perhaps too large, but the number is reduced some eighty per cent from the number of present committee chairmen, and the nine men in each House would provide a far greater degree of responsibility for power than that now exercised. The committee cabinet would also make it possible for Congress to have a co-ordinated policy of legislation and of control, rather than a jerry-built policy formulated by a hundred different committees.

With a Legislative Cabinet it would be possible for Congress and the people to have an authoritative voice to express their wishes. Under the present method of selecting Congressional chairmen by hook or by crook, the channel of communication between the people and Congress on the one hand and the administration on the other hand is almost closed, and neither Congress nor the people have a spokesman who adequately represents their views. The enunciation of Congressional policy is left to the caprices of any Congressman who wishes to



speaking, and such an individual speaks without authority and without facts and he represents no one officially except himself.

I have used Senator Reynolds as a whipping boy for my examples before, and I might as well use him again, thus localizing so far as possible the antagonisms which my plan might generate. The head of the Senate Committee on Military Affairs should be largely responsible for an adequate military legislative program and should lead investigations ferreting out the deficiencies in the organization of our armed forces; he should be carefully and conscientiously selected, and the public should feel that it has some part in the process and some stake in the outcome. The present procedure of selecting by seniority a committee chairman such as Reynolds has unfortunate repercussions on the vitality of Congress. The administration will consult him as little as possible and will tell him only the things which it is imperative that it tell him; and Members of Congress will not encourage him to make studies of army organization or will not suggest that he enunciate a particular policy representing the opinion of Congress.

It is imperative in a democracy that the military authorities be under civilian control; with the growth in number of our armed forces this problem grows in complexity and in importance. But the civilian control should be under the authority of those who understand military organization and

who are in sympathy with the voting majority. The job demands tact, consideration, and a knowledge of the proper suggestions to be made, without, at the same time, upsetting or disclosing important military strategy. There is a lot of fuss and feathers in both the army and the navy, some of which is unnecessary and some of which, if not undemocratic, is at least outmoded custom. But neither Congress nor the people have any assurance that the necessary civilian control will be forthcoming if a man such as Senator Reynolds is, by seniority, chosen for their spokesman. Of course, even the army and the navy are somewhat subject to the wishes of public opinion and both are legally responsible to the President, but public opinion needs well-informed spokesmen, and the President has many other imperative interests to consume his time.

It is important that the Legislative Cabinet be not bi-partisan except perhaps in war time or when the minority party controls one or both Houses. In the latter event a Legislative Cabinet would provide a method for the President to secure the co-operation of a Congress not controlled by his party. The Cabinet might well be bi-partisan when questions of foreign policy are of major importance, although there is always the possibility that the issue of our foreign policy will be the major dividing line between the parties. In any event, there is no need to give the minority representation merely to create a semblance of unity and of non-partisanship which

has no basis in fact. Such a proposal was made by the *New York Herald Tribune* shortly after the adoption of the Lease-Lend Law. The *Herald Tribune* advocated editorially:

“If the President were to take into his confidence not only the leaders of his own party in Congress, but also such leaders of the opposition as Senator McNary and Representatives Joseph W. Martin, Jr. and James W. Wadsworth, much could be done to expedite the passage of needed legislation. If he were to lay before these men enough of the facts of a confidential or secret nature to enable them to judge for themselves the urgency of certain measures, or to bear witness to the soundness of certain conclusions of policy which the President himself draws from the facts, and if these men were to go before their colleagues and say, ‘We have verified the facts and we believe that the objectives of the proposed legislation are of utmost importance to the nation,’ there can be little doubt that their colleagues would accept this testimony and would support the legislation.”<sup>1</sup>

Although I agree that in conducting foreign affairs it is desirable to present as broad and as united a front as possible, nevertheless, when actual political cleavages exist, one might as well recognize them for what they are. Two of the three members nominated by the *Herald Tribune* for confidants of the President — Senate Minority Leader McNary and

<sup>1</sup> *New York Herald Tribune*, May 10, 1941.

House Minority Leader Martin — had long isolationist records and were not in sympathy with President Roosevelt's foreign policy. There would have been more reason for giving recognition to Republicans like Representative Wadsworth, who supported President Roosevelt's foreign policy and who was one of the nominal authors of the Selective Service Act of 1940, but I can see nothing but trouble arising from giving recognition to men who oppose the administration's policy in both foreign and domestic affairs. The function of Martin and McNary as minority leaders did not include their being brought into the formulation of important policy in which they did not believe.

If a Legislative Cabinet is to succeed, it must be formed on a partisan basis. The failure of Congress to set up a workable relationship with the President in the past can, I believe, be traced to Congress' propensity to make bi-partisan that which should be partisan. The Congressional custom of placing members of the minority on important committees has resulted in a conviction that political decisions should be made by groups and that these groups should have bi-partisan representation.

There is a further question of whether a Legislative Cabinet would impinge upon the authority of the Administrative Cabinet. I see no reason why there should be any important unresolvable conflict between the President's Cabinet and the Congressional Cabinet, for each Cabinet would con-

tribute its own essential information to the conference. With the political, economic, and administrative problems considered, a more balanced policy should result. In the event of a conflict in opinion, the President would undoubtedly have the last word, but there are important checks on his acting arbitrarily. If the President acted against the advice of his Congressional leaders, he might have to pay the price of a Congressional revolt leading to the diminution of his own power and the loss of his popularity. On the other hand, if the Congressional leaders acted hastily or timidly, the President could use the political weapons at his command. Ordinarily the President is stronger than any Congressional leader. If the President is convinced that his course is correct and that he would receive popular support both in Congress and among the voters, he has available many means of persuasion. He cannot dissolve Congress and ask for a vote of confidence, as some have suggested, but short of this he can exert great pressure to have his position placed in a favorable light.

I am not suggesting that improved Congressional-presidential relations would ensure the adoption of a wise political policy, but I believe it would make the formulation of such a policy easier. The President and Congress each needs the assistance of the other. Policy cannot be formed by driving the President, by carping at his policies, nor yet by letting Congress administer the laws.

§ 3. *Communications Are Poor*

The channels of communication between Congress and the executive branch could be improved in several ways. In a period of rapid cultural change it is important that this process of communication be speeded up in order that there not develop a schism in understanding between the government and the people. This process of communication could be advanced in three ways: by allowing full Congressional representation in the advisory councils of administration; by allowing Congress to discuss and to pass on many of the important problems now decided exclusively by the administration; and by having the administrators give Congress more complete and more regular reports on their activities.

The two-way communication of ideas, from the government to the people and from the people to the government, would be facilitated if the Legislative Cabinet were regularly represented in the advisory councils which formulate policy. Congressional counsel would better enable administrators to know what is feasible politically, while administrative counsel would better enable Congress to know what is desirable economically.

In the execution of policy, Congress feels that it is one of the parties at interest and that its opinion is worthy of consideration. According to the theory

of the Separation of Powers, the job of Congress ends and the President's job begins when an act is passed, but because the execution of law has many continuing social and political consequences, because the execution of law depends on many considerations other than the actual verbal content, and because Congress must raise money to finance the administration of law, Congressional interest in legislation extends much further than the mere passage of bills. It is constitutionally impossible to place Congressmen in the Administrative Cabinet. A Legislative Cabinet would give the President able legislative advisers without these legislators relinquishing their seats in Congress.

To bring the Congress closer into the councils which formulate policy would, I believe, be helpful both to Congress and to the President. It would be helpful to the President by giving him support for decisions he might otherwise hesitate to make, it would be helpful to Congress by directing the instruments of Congressional power toward concrete ends. Congress would be reinvigorated. Its positions of power would no longer be dead-end alleys where its possessors have no vital share in operating the government and where honor and reputation go to those who act independently and irresponsibly. The Congressional outlook would turn from the parochialism of the present to an increasingly national point of view.

The penalties for excluding Congressmen from

the national councils are high. Their exclusion means a continuance of the localisms which are so often a predominant characteristic of Congressional behavior. Moreover, when Congress feels ignored, it often retaliates irrationally, by sulking, by refusing to pass needed legislation, and by passing ill-advised legislation. When Congress is nettled, it is well to treat her like a desperate woman and walk the other way.

The process of communication between Congress and the administrative could also be advanced by allowing Congress to debate some of the important policy decisions made by the administration. I have already mentioned the destroyer-base deal and the Federal Communications order to break up the great radio networks. Great policy decisions are continually made, but Congress has no opportunity to say anything about some of them. In these questions Congress is not a rubber stamp, it is ignored completely. The Act of Havana, for instance, was one of the most important enunciations of foreign policy in a decade, establishing as it did a policy of solidarity for the twenty-one Republics of the Western Hemisphere. About this act Congress had nothing whatever to say, and although the act would probably have been approved overwhelmingly if Congress had been asked for its consent, Congress had no part in its formulation or in its acceptance. Because of the stern requirements for treaty ratification — that of the consent of two thirds of the Sen-



ate — other methods have been evolved which not only short-circuit the Senate but which short-circuit Congress. The greatest objection to this present procedure is not one of legalism but it is that, in the future, when Congressional consent is required for some proposal — such as the peace — the Congressional mind will not have been fully informed with a background of experience.

The process of communication could be further advanced by allowing the important administrative heads to speak directly to Congress from time to time. There is now a considerable amount of irresponsible criticism of administrators in both Houses, and especially in the House of Representatives, and I believe that this irresponsibility would be decreased, that Congressional knowledge would be increased, and that members of the administration would be better able to justify their policy if they could speak directly to Congress. Congressional hearings are now a very important factor in improving the communications between the administration and Congress, but they go only part way; many hearings are poorly attended, which means that the witnesses waste their talents before a slim and unrepresentative audience. Many Members of Congress cannot conveniently attend these hearings and, if they do attend, they cannot participate. On the other hand, members of the administration cannot now appear before Congress to answer charges made against them. No matter how severe the criti-

cism, unjust or otherwise, the man who is attacked cannot answer the charges himself. I do not propose that the Cabinet be given seats in Congress; that would be too great a waste of time for the benefits which would accrue. I do suggest, however, that on certain occasions members of the Cabinet and other important administrative officers be allowed to address the Houses of Congress and to submit themselves to questioning. They do this now at press conferences. They do this now at Congressional hearings. But they do not do it before Congress, and I feel that this type of direct communication between Congress and the administrators would reinvigorate the Congressional process.

#### § 4. *Congress Needs New Purse Strings*

Many of the present deficiencies in Congress' control of finance could be overcome by changes in procedure. Congress wishes to control funds more effectively, but it does not recognize that the weakness of the present system lies in the method of control or that any strengthening of the system would necessitate procedural reforms. Procedural reforms, however, will not come easily, for the present method is attractive to those Congressmen who can use the process of itemization to secure small favors for their districts. They have a vested interest in the old system.

Congress is suspicious of the executive branch. It

feels that it is asked to appropriate money for objects which may not be necessary and about which it knows little. It feels, in short, that departments are interested primarily in spending money and that Congress must levy taxes to pay for administrative prodigality. This distrust results in itemization, in budgetary slashes, and in acrimonious debate. The most developed mechanism of control is itemization, but this mechanism works unevenly and often clumsily and perhaps increases inefficiency. The emphasis on this method has obscured other methods which, it is believed, would improve fiscal procedure by giving Congress an increased voice in determining the amount of money spent, by informing Congress how the money is spent, and by correlating spending and taxing.

I believe that Congress should consider the budget as a unit rather than consider the numerous appropriation bills which have little relation with one another. In form, the budget bill should be shorn of verbosity and confined to a few hundred, or less, appropriation items, and should be accompanied by schedules to guide administrative discretion. The present text of the bills should be re-examined by a competent technical committee, representing, say, the Congressional appropriation committees, the Bureau of the Budget, the Comptroller General, the Treasury Department, and perhaps budget officers from several departments. What is essential in the text of appropriation bills should be enacted into

permanent law (in addition to the instructions in the bills themselves there are many pages of instructions in the permanent statutes), and what is non-essential should be discarded.

After these reforms the budget bill would contain but a dozen or so pages rather than the several hundred the bills now contain. It would be intelligible to all, and its passage would center legislative attention on fiscal policy. Congress would at least have a responsible share in determining fiscal policy, which it cannot now have when departmental appropriations are considered separately. The President is legally responsible for suggesting whether revenue for his budget estimates should be raised by bond issue or by taxation, but there is no correlative action on the part of Congress. Under the present procedure Congress does not determine the upper limits of spending, the relative merits of the objects, or the method of financing. The leaders of the appropriations committees keep in mind a figure beyond which they do not wish to see bills go, but this figure is not one which has been agreed to by Congress nor one which the leaders are able to persuade Congress to follow.

Connected with the budget bill should be a statement of Congressional opinion on the best method for raising the necessary revenue. It would be infeasible to join a tax bill with the budget bill, but Congress could express its opinion on whether new taxes were necessary, whether a deficit should be

covered by borrowing, or, perhaps some day, whether the debt should be retired or taxes reduced. The Ways and Means Committee, having received its instructions, would then later report out a revenue bill. This procedure would mean that Congress would consider appropriations as a problem closely related to revenue, and that Congress would express its opinion on the need for more or less revenue, just as the President is compelled to do in his budget.

The reasons once given for separately considering revenue and appropriations — that revenues were derived largely from the tariff — are no longer valid. The tariff, it was argued, was a political problem to be decided independently of the need for funds. This argument had merit, for nothing could be more noisome than a tariff fight on every appropriation bill. The tariff, however, no longer supplies a major portion of the nation's revenues, and there are few who would any longer suggest that the tariff be raised or lowered for revenue purposes only. There is now no reason to suppose that a tariff fight would ensue if income and outlay were considered together.

In spite of the merits of treating income and outlay as facets of the same subject, there is no need to combine the revenue and appropriations committees, as they were combined before 1865. Congressional practice has become too traditionalized for such a change, and there would perhaps be difficulty

preserving a committee with such great power. Even now the extensive power of the House Committee on Appropriations is occasionally attacked, and one can imagine the reaction of the House if this power were doubled.

An improved fiscal procedure should be attractive to both the savers and the spenders. A new tool needs to be fashioned, a new procedure developed, so that whoever is in power can determine its program wisely. Fiscal outlay and fiscal income are important public questions, yet the present Congressional procedure does not allow the answers to be given intelligently. Whether one is a New Dealer who wishes the national income to be diverted differently or an Old Dealer who wishes financial prudence to prevail, the results are the same: there is now no adequate control over the amount of spending, nor is there much correlation between spending and taxing. Under the present system it is impossible for Congress to determine the amount of the budget. If one wishes, say, to lower the budget figure, to reduce governmental outlay without reducing governmental services, one cannot do it without discovering precisely what amounts can best be cut, and where. Neither a party, a bloc, nor an individual can effectively recommend economy without having an intimate knowledge of the spending of all departments and agencies. An alternative plan of slashing budget estimates vertically by a certain

percentage leads but to injustice, penalizing the prudent administrators without chastening the imprudent.

The case for increasing Congressional control over federal finance should be equally attractive to the spenders. It is not now possible to indicate a preference to spend, say, for housing rather than, say, for the services offered by the Department of the Interior; nor is it now possible to prefer decreased taxes rather than continue all of Interior's services. To divert or to decrease Interior's spending, it would be necessary to have a knowledge of the thousands of objects for which more than 800 specific sums can now be spent. These interests range from \$3,180 for janitor service in the Alaskan Governor's office to \$3,500,000 for Bonneville transmission lines. To add to the complexity, there are hundreds of limitations on how these sums can be spent.

From a superficial analysis, loose fiscal control might appeal to those who favor increased State services. Spending, however, should not be dissociated from control or from direction. If the State increases — or decreases — its services, spending should be well planned, and those who frame the policy should be responsible. The electorate can then prepare its sanctions accordingly.

Congress has been caught in a web of its own device. Since Jefferson's administration it has itemized expenditures in order to provide a form of accountability for administrative spending. Lacking an ade-

quate audit which would tell how efficiently money was spent, Congress has limited administrative discretion in advance by itemizing amounts. But this itemization makes it difficult for Congress to control total spending.

There are limits to what Congress has time to do; and it follows that whatever it does do, it should do well. The pragmatic test shows that Congress is not at its best in determining the details of administrative spending. Granted that there are many cases of maladministration in office, it does not follow that Congress can correct this by itemizing appropriations. But this is the one method, practically the only method, which has heretofore been used. There may, moreover, be some correlation between itemization and inefficiency. Some may raise an objection that the departments cannot be trusted with additional authority, that their past indiscretions cause the present itemization, and that to repeal such itemization now would be folly. It might be folly if Congress received no *quid pro quo*, but this it could have through an adequate audit.

If, as some feel, it is necessary to change the Comptroller General's legal power in order to make him an effective auditor, that should be done; if, on the other hand, a reinterpretation of his function is all that is necessary, we have an opportunity to test this thesis. The newly appointed Comptroller General, former Representative Lindsay C. Warren, is well acquainted with the needs of Congress, and if

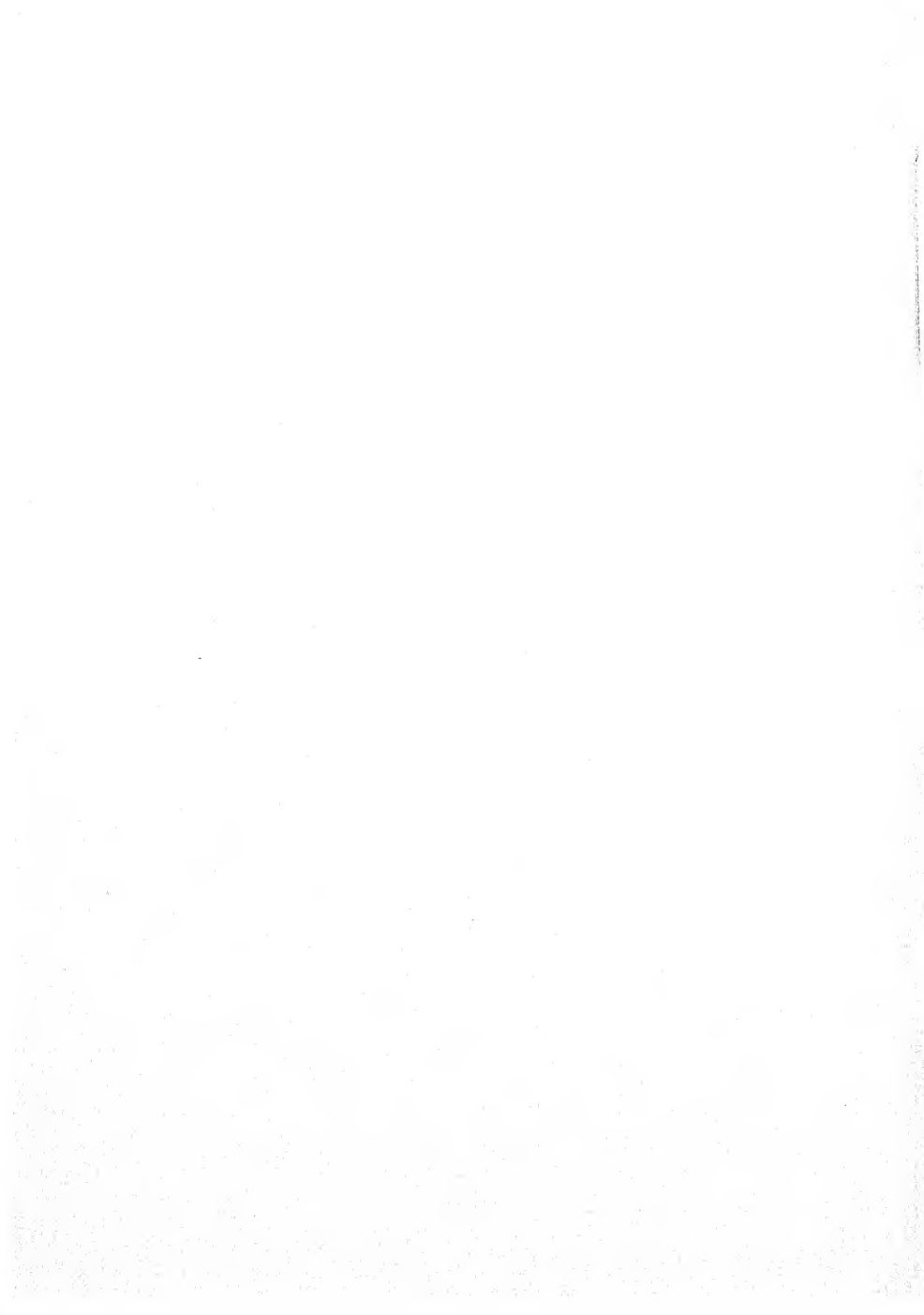


it is possible to transform this office into an effective agency for Congress, Mr. Warren would seem to be the man for the job. Unfortunately, however, the decisions of Mr. Warren to date continue to emphasize the question of legality.

The democratic process is the most complicated of all methods of governing, but if properly operated, it should not only give the people the kind of governance they wish, but also be the most just, the most enduring, and the most satisfying of all types of government. If public policy is not to be formed by the democratic process, the alternative is pretty clear: public policy will be formed by a self-appointed, self-perpetuating elite group. At one time in the Western world this elite group was monarchical, and it bolstered its will-to-rule with pagantry, with tradition, and at times with claims of divine approval. In many countries the elite group is now fascist and it bolsters its will to rule with sheer force.

In a democracy, however, one does not depend on an elite group to provide and to execute a policy and to maintain itself in office of its own volition. The field of political action in a democracy lies in translating the ill-formed and poorly expressed aspirations of the people into concrete administrative action. We have learned there is no mystic reservoir of knowledge among the common man which needs but to be tapped. Direction must often come from

the top, as well as consent from the bottom. Political action needs leadership to inspire; it needs values in which to believe; it needs parties and groups to organize opinion; it needs expertness to plan; and it needs training to administer. We must with tolerance, but not with complacency, operate institutions which were not devised for the needs of a complicated economy.



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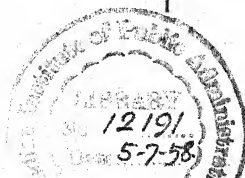
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## PRINTER'S NOTE

This book was set on the Linotype in Janson, a recutting made direct from the type cast from matrices (now in possession of the Stempel foundry, Frankfurt am Main) made by Anton Janson some time between 1660 and 1687.

Of Janson's origin nothing is known. He may have been a relative of Justus Janson, a printer of Danish birth who practised in Leipzig from 1614 to 1635. Some time between 1657 and 1668 Anton Janson, a punch-cutter and type-founder, bought from the Leipzig printer Johann Erich Hahn the type-foundry which had formerly been a part of the printing house of M. Friedrich Lankisch. Janson's types were first shown in a specimen sheet issued at Leipzig about 1675. Janson's successor, and perhaps his son-in-law, Johann Karl Edling, issued a specimen sheet of Janson types in 1689. His heirs sold the Janson matrices in Holland to Wolfgang Dietrich Erhardt.

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